2012 Annual Report of **The Ombudsman Hong Kong**



We Discover and Discern

Vision

To ensure that Hong Kong is served by a fair and efficient public administration which is committed to accountability, openness and quality of service

Mission

Through independent, objective and impartial investigation, to redress grievances and address issues arising from maladministration in the public sector and bring about improvement in the quality and standard of and promote fairness in public administration

Functions

The Ombudsman should serve as the community's watchdog to ensure that:

- Bureaucratic constraints do not interfere with administrative fairness
- Public authorities are readily accessible to the public
- Abuse of power is prevented
- Wrongs are righted
- Facts are pointed out when public officers are unjustly accused
- Human rights are protected
- The public sector continues to improve quality and efficiency

Values

- Maintaining impartiality and objectivity in our investigations
- Making ourselves accessible and accountable to the public and organisations under our jurisdiction
- According the public and organisations courtesy and respect
- Upholding professionalism in the performance of our functions

Performance Measures

- Speed of case work
- Complainants' level of satisfaction with case handling
- Redress obtained
- Recommended improvement measures committed to and/or implemented
- Non-repetition of complaints

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History in Brief

1988

20 July

The Commissioner for Administrative Complaints ("COMAC") Bill was passed by the Legislative Council ("LegCo")

1993

21 July

Legislative review completed, the COMAC (Amendment) Bill was introduced into LegCo

1989



First Commissioner Mr Arthur Garcia, JP

1 February

The COMAC Ordinance was enacted

First Commissioner Mr Arthur Garcia, JP assumed office

1 March

The Office of COMAC became operational with staff seconded from Government

15 November

COMAC became a member of the International Ombudsman Institute ("IOI")

1994

1 February

Second Commissioner Mr Andrew So, JP assumed office



Second Commissioner Mr Andrew So, JP

24 June

The COMAC Ordinance was amended:

- to enable the public to lodge complaints directly, instead of by referral from LegCo Members
- to extend the jurisdiction to some major statutory bodies
- to empower the Commissioner to publish anonymised investigation reports
- to empower the Commissioner to initiate direct investigation

30 June

Advisers were appointed to provide expert advice and professional opinion

1 July

Chinese title of the Commissioner was changed to「申訴專員」and the Office to「申訴專員公署」



Appointment of Advisers

1995

1 March

Jurisdiction was extended to investigation into alleged breach of Code on Access to Information

23-25, 27 October

The Commissioner hosted the 15th Australasian and Pacific Ombudsman Conference and the International Ombudsman Symposium

1996



First Complaint Management Workshop

1 March

Non-official Justices of the Peace ("JPs") were enlisted in a JPs Assistance Scheme

15-16 April

The Ombudsman's Office participated in the establishment of the Asian Ombudsman Association ("AOA") and became a founding member

12-13 June

First Complaint Management Workshop for public officers was organised

5 September

Resource Centre was opened

24 October

The Ombudsman was elected to the Board of Directors of the IOI

27 December

English titles were changed to "The Ombudsman" and "Office of The Ombudsman"

1997

1 April

Mediation service was launched as an alternative dispute resolution method

25 July

The Ombudsman's Awards were introduced to acknowledge public organisations handling complaints positively

1998

8 May

The Ombudsman was elected Secretary of the AOA

1999



Third Ombudsman Ms Alice Tai, JP

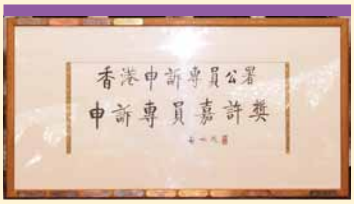
1 April

Third Ombudsman
Ms Alice Tai, JP assumed office

22 July

The Ombudsman's Awards were extended to acknowledge public officers' contribution towards better quality services

2000



The Grand Award of
The Ombudsman's Awards

27 July

The Ombudsman's Awards were further extended to acknowledge public officers handling complaints professionally

2 November

The Ombudsman was elected to the Board of Directors of the IOI

2001

28 March

Telephone complaint service was introduced

19 December

The Ombudsman (Amendment) Ordinance 2001 came into operation:

- to establish The Ombudsman as a corporation sole with full powers to conduct financial and administrative matters
- to empower The Ombudsman to set terms and conditions of appointment for staff
- to adopt systems and processes separate from Government

2002

6 September

Office moved to permanent accommodation at Shun Tak Centre in Sheung Wan

16 October

The Ombudsman was elected Secretary of the IOI

2004

1 April

Ms Alice Tai, JP started her second term (2004 – 2009) as The Ombudsman

10 September

The Ombudsman was re-elected as Secretary of the IOI

13 December

With the departure of the last civil service secondee, this Office was staffed by a workforce entirely appointed by The Ombudsman under The Ombudsman Ordinance

2005

24 October

A "Memorandum of Administrative Arrangements" ("MAA") was signed between the Director of Administration and The Ombudsman to set out the general principles and guidelines governing the administrative arrangements for this Office

28 November - 1 December

The Ombudsman hosted the 9th AOA Conference



Signing of MAA

2008

5-8 November

The Ombudsman hosted the Board of Directors Meeting of the IOI



IOI Board Meeting

2010

19 October

The Ombudsman was elected Treasurer of the IOI

2009



Fourth Ombudsman
Mr Alan Lai Nin, GBS, JP

1 April

Fourth Ombudsman Mr Alan Lai Nin, GBS, JP assumed office

11 June

The Ombudsman was re-elected to the Board of Directors of the IOI

2011

8 December

The Ombudsman was re-elected Secretary of the AOA



AOA Conference

The Ombudsman's Review



As mentioned in my last report, our Office has streamlined its complaints handling procedures by making more use of our statutory power of "preliminary inquiries" to carry out simple inquiry for speedy conclusion of cases of a more general nature. Our efforts have borne fruits: while the total number of individual cases pursued have increased, a larger proportion were concluded within three months this year as compared with last year. I hope this improved efficiency in resolving complaints would bring greater satisfaction to the public we serve.

However, our efficient service can only be sustained if parties to complaints afford us the necessary cooperation by providing us with full and relevant information in a timely manner.

On the complainants' part, we expect them to furnish us with pertinent and factual information they possess about their cases, instead of clouding the issues with half-truths. Furthermore, they must not try to exploit our inquiry process to pursue their own agenda, for example, to stall the legitimate action of the organisation under complaint. After all, our role is one of impartial investigator/adjudicator to discover and discern, not advocate for any particular party. In the past, our Office has promoted these principles and provided guidance for complainants in leaflets and other publications. We have now consolidated these into a Complainants Charter so that complainants may have a clear idea of their own responsibilities as well as what they can expect when lodging a complaint with us.

On the part of organisations under complaint, while I appreciate the high level of cooperation that most of them have given to our work, some have been tardy in responding to our inquiries. This has not only frustrated our effort to expedite our complaint processing but led to our Office being misunderstood at times by complainants as condoning the organisations' misbehaviour. I hope

heads of organisations will ensure that all staff handling our inquiries are prompt in providing responses to us and streamline their internal procedures where necessary.

In my last report, I touched on some widespread and persistent problems, such as illegal parking of bicycles at public transport interchanges and ineffective enforcement action against unauthorised building works in New Territories exempted houses. I attributed those problems to the compartmental mentality of the Government departments concerned and the lack of drive, coordination and cooperation among such departments. I also commented on their failure to keep abreast with the times.

The summaries of selected cases in this report contain examples which show that Government departments still have a tendency to shove off a problem rather than solve it. A common argument deployed by the departments concerned is that it does not have the statutory power to take action and/or that another department is in a better position to do so. On closer analysis, this often turns out to be a convenient but lame excuse. Failure to apply their powers diligently and vigorously to any given situation represents a let down of the trust placed on Government authorities. Sometimes, departments might be just being cautious in not overstepping their line, but they should have really worked together to tackle the problem they face. If the prevailing policies or legislation fail to provide a solution, they should escalate the matter to the Policy Bureaux concerned.

I should add that it is also common among Government departments to be insensitive to the emergence of new problems. Instead of nipping the problems in the bud, they either take no action, or just deal with such problems by means of existing (and barely relevant) legislation, policies and procedures and naturally to no avail. The problems then grow and become unwieldy. Historically, this had led to the sprawl of unauthorised developments and illegal occupation of Government land in the New Territories. More recently, this Office has urged for new ways for curbing the proliferation of on-street promotional activities. We have also initiated direct investigations into the regulatory regime for food establishments and the advance booking arrangements for sports venues. We hope to stimulate more initiative, vigour and imagination among the departments concerned.

To end this review on a more positive note, I am pleased to report that our pilot scheme to communicate with complainants via email has proceeded smoothly. More and more complainants have chosen to receive our letters via password protected email attachments. This has further increased efficiency and user convenience. We will continue to explore the use of IT to boost our productivity.

Alan N Lai
The Ombudsman
31 March 2012



Chapters

Chapter 1

Our Role and Jurisdiction

1.1 Our Office was established in 1989 by The Ombudsman Ordinance ("the Ordinance"), Cap 397 of the Laws of Hong Kong, as the city's independent watchdog of public administration. We investigate actions by Government departments and public bodies for administrative deficiencies and recommend remedial measures. We foster good public administration for responsive and responsible, fair and open governance.



Jurisdiction

1.2 The Ombudsman has powers to investigate complaints from aggrieved persons about maladministration by the Government departments and public bodies listed in Part I of Schedule 1 to the Ordinance (see **Annex 2**). We are always on the lookout, and maintain close contact with the Administration, for possible additions to the Schedule.

1.3 Besides investigating complaints received, The Ombudsman may, of his own volition, initiate direct investigation into areas of suspected maladministration usually involving systemic problems or issues of significant public interest.

1.4 Section 2 of the Ordinance defines "maladministration" as inefficient, bad or improper administration including unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for others.

1.5 The Hong Kong Police Force, the Independent Commission Against Corruption and two other organisations in Part II of Schedule 1 to the Ordinance (see **Annex 2**) are not subject to our investigation, except for cases of non-compliance with the Code on Access to Information[1].

Actions Not for Investigation

1.6 The Ombudsman's purview is not without prohibition. Cases related *inter alia* to legal proceedings or prosecution decisions, contractual and other commercial transactions, personnel matters and imposition or variation of conditions of land grant are out of bounds. A full list of such prohibitions is at **Annex 3**.



[1] The Code was introduced in 1995 to make available to the public as much Government-held information as possible, unless there are valid reasons – related to public, private or commercial interests – to withhold it. It applies to all Government departments, the Hong Kong Monetary Authority and the Independent Commission Against Corruption.



Restrictions

1.7 The Ordinance also prescribes other circumstances under which The Ombudsman shall not conduct an investigation. For example, the complainant has had knowledge of the subject of complaint for over two years, is anonymous, or is not the person aggrieved or a suitable representative of that person. Such restrictions are also detailed at **Annex 3**.

1.8 Nevertheless, in some cases, The Ombudsman has discretion whether or not to conduct, or discontinue, an investigation. A case may be taken up, for instance, if the complainant is able to explain satisfactorily why the complaint could not have been lodged within two years.

Powers of Investigation and Recommendation

1.9 Under the Ordinance, The Ombudsman has a wide range of investigative powers: conducting inquiries, obtaining information and documents, summoning witnesses and inspecting premises of organisations under complaint.

1.10 While The Ombudsman's investigation shall not affect any action taken by the organisation under complaint or the organisation's power to take further action with respect to any decision which is subject to the investigation, The Ombudsman may report his findings and make recommendations for redress or improvement to the organisation.

1.11 Where an organisation does not adequately act upon his recommendation, The Ombudsman may submit a report to the Chief Executive of the Hong Kong Special Administrative Region. Where a serious irregularity or injustice is found, The Ombudsman may make a further report to the Chief Executive. In such event, the Ordinance requires that a copy of the report be laid before the Legislative Council within one month or such longer period as the Chief Executive may determine.



Chapter 2

Our Procedures

Complaint Handling

Modes of Complaint

2.1 Complaints may be lodged in person, by mail or by fax, or on our postage-free complaint form. They may also be made by telephone for simple cases involving not more than two organisations.

2.2 We also accept complaints via email. To maintain secrecy required by law and to guard against unauthorised disclosure, our replies to complainants via email are password-protected unless the email exchange is covered by electronic certificate.



Complainants' Representation

2.3 For a complaint made by an individual, he/she should normally be the person aggrieved unless that person is unable to act for himself/herself (see **para. 1.7** of Chapter 1).

2.4 For a complaint made on behalf of a body corporate, the complainant has to satisfy The Ombudsman that the body corporate has authorised him/her as its representative. The Ombudsman will allow legal representation if he considers it justified.

Topical Complaints

2.5 From time to time, we receive complaints from more than one person, more or less concurrently, in respect of a particular current issue or hot topic. We term such cases "topical complaints" to distinguish them from complaint cases on disparate issues or topics, so as to reflect more accurately our caseload and the frequency of complaint against different organisations.



Assessment

2.6 Our Assessment Team usually screens all incoming complaints within a day or two to examine whether they come within the statutory purview of The Ombudsman and whether they have a *prima facie* case to warrant investigation. The Team will seek further information or clarification from the complainant if necessary.

2.7 We operate a Duty Officer Scheme under which our investigation officers will meet new complainants face-to-face to obtain essential information on their cases for assessment and to brief them on our procedures and restrictions.

2.8 Cases "screened in" go to one of our six investigation teams for inquiry, resolution by mediation or full investigation. For the rest, a recommendation will be made to The Ombudsman for not pursuing the case.



Fig. 2.1 Duty Officer Scheme

2.9 Where The Ombudsman decides not to pursue a case, we aim to notify the complainant of the reason(s) within 15 working days (see **Annex 14** for our performance pledges). Even with complaints "screened out" because the complainants are anonymous, unidentifiable or not personally aggrieved, we do not dismiss them lightly but may examine if any serious or systemic maladministration or significant issue was involved. This may prompt topics for direct investigation assessment or even direct investigation (see **paras. 2.21 – 2.25**).

2.10 In some cases not pursued, as the complainants may be in need of services from some Government departments or public bodies, we take it upon ourselves to advise them where and how to get such services.

2.11 On appeal by complainants of cases "screened out", the Assessment Team will "re-assess" such cases for reasons to "re-open" the matter. The Team will then present its recommendation to The Ombudsman for decision as to whether the case should be re-opened for inquiry.



Fig. 2.2 Assessment Team meeting

Inquiry

2.12 The Ordinance provides that for the purposes of determining whether to undertake a full investigation (see **paras. 2.16 – 2.19**), The Ombudsman may conduct such "preliminary inquiries" as he considers appropriate. In the interest of complainants, we often use this procedure to resolve complaint cases of a general nature more speedily, without unnecessarily resorting to the more time-consuming action of full investigation. For simplicity, we call this "inquiry".

2.13 In conducting an inquiry, we ask the organisation under complaint to respond to us and, if we see fit, to the complainant in parallel. We will examine such response, the complainant's views on it, if applicable, together with any other relevant information or evidence that we have collected. We will, in conclusion, present our findings to the complainant and make suggestions to the organisation for remedy or improvement where necessary. Where deeper and fuller probing is needed before we can conclude the case, we will start a full investigation.

Mediation

2.14 With the consent of both the complainant and the organisation complained against, The Ombudsman may try to settle a case by mediation. This alternative method for dispute resolution is suitable for cases involving only minor or no maladministration. The two parties meet voluntarily to explore a mutually acceptable solution. Our investigation officers trained in mediation act as impartial mediators.

2.15 If mediation fails to resolve the matter, or the complainant requests to reactivate his complaint, our Office will assign another investigation officer to initiate an inquiry or a full investigation afresh. This is to ensure objective processing not influenced by prior knowledge from the mediation meeting.

Full Investigation

2.16 For complex cases which appear to involve issues of principle, serious maladministration, gross injustice, systemic flaws or procedural deficiencies, or simply require deeper and fuller probing (see **para. 2.13**), our Office will conduct a full investigation.

2.17 This is an extensive or intensive process of probing to establish the facts. Apart from examining documents, we may summon witnesses, counter-check data with the complainant and go on site inspections. Where necessary, we will consult members of our Panel of Advisers, who are all experts with good standing in professional fields (see **Annex 17**).



Fig. 2.3 Site inspection

2.18 We will also invite comments on our preliminary observations from any organisation or individual that may be criticised or adversely affected by the investigation report. When finalised, the report will be presented to the complainant for information and to the head of the organisation concerned for implementation of our recommendations.

2.19 In our investigation reports, complaints are classified according to how far the allegations of maladministration are well founded: “substantiated”, “partially substantiated” or “unsubstantiated”. In some cases, although the specific allegations in the complaint are unsubstantiated, other significant acts or aspects of maladministration are identified. These are then classified as “substantiated other than alleged”. The different categories of outcome are defined in the **Glossary of Terms** (see **Annex 1**).

Review

2.20 Complainants dissatisfied with our findings or conclusions may seek a review of their cases by providing supporting arguments and/or information. Such requests are first assessed by the Assistant Ombudsman concerned, who will consider the complainant’s grounds for review and whether the request should be entertained; if so, he will assign a suitable investigation officer to re-examine the case in detail and seek further information or comments from the organisation under complaint as necessary. A submission will eventually be made to The Ombudsman, via the Deputy Ombudsman, to determine whether our original conclusion should be upheld or varied.

Direct Investigation

2.21 The Ombudsman’s power to conduct direct investigations (“DIs”) in the absence of complaints enables him to pursue issues raised by people not personally aggrieved (see **para. 2.9**), as well as to look at matters at a macro level as opposed to individual cases. Essentially, the latter means examining systems with systemic or widespread deficiencies. A DI may be prompted by significant topical issues of community concern, implementation of new or revised Government policies or repeated complaints of particular matters.



DI Assessment

2.22 Before deciding whether or not to launch a DI against an organisation, we may conduct an initial assessment (“DI assessment”). For this purpose, we may research public information from annual reports and websites, legislation and media reports, or seek information from the organisation directly. If our assessment points to the need for further study, we will formally notify the head of the organisation and initiate a DI.

2.23 Where our DI assessment finds no significant maladministration or the organisation concerned has made proactive improvement, we will simply conclude our study and offer our findings to the organisation. Where appropriate, we make suggestions for improvement.

Investigation Methodology

2.24 The procedures for DI are akin to those for investigation into individual complaints. Unlike the latter, however, we often declare publicly our initiation of DIs to invite views on the subject from relevant sectors and experts as well as the community at large.

2.25 In the course of our investigation, we often meet with senior officers of the organisation to discuss our preliminary findings. Such exchanges are useful in clarifying points of doubt and furthering better insight into the issues.

Implementation of Recommendations

2.26 In all our reports, whether on complaint investigation or DI, our recommendations to the organisation concerned aim to make for more open and client-oriented service, transparent and accountable administration, more efficient processes and effective practices. These may even include comments on policies found outdated or inequitable, although policies *per se* are, strictly speaking, not matters for our investigation.

2.27 Heads of organisations have a duty to report at regular intervals their progress of implementation of our recommendations. We will monitor and keep track by correspondence.



Secrecy Requirement and Publication of Reports

2.28 The Ombudsman, staff and Advisers are all bound by law, under penalty of a fine and imprisonment, to maintain secrecy on all matters that come to our knowledge in the exercise and execution of our functions.

2.29 In this connection, it is our general practice not to respond to any question from third parties on individual complaints. However, where it is in the public interest to do so, The Ombudsman may publish at media conferences DI reports and anonymised reports on complaint investigation, or otherwise answer media enquiries on such investigations, again hiding names and other personal data.

2.30 We also place all our DI reports on our webpage for public reference.



Fig. 2.4 Announcement of investigation results in press conference

Essence of Our Investigation

2.31 Our object in investigation is to establish the facts of a case and, where appropriate, enhance the quality of public administration. We do not conduct witch-hunt or criticise regardless. We inquire without fear or favour, bias or prejudice. We aim for fair and impartial conclusion of a case.

Performance and Results

Enquiries and Complaints Processing

3.1 We received 5,029 complaints this year, slightly less than last year. However, if secondary cases[1] in *topical complaints* (see **para. 3.4** below) were discounted, the figure stood at 4,849, the highest since 2008/09, when we started to capture the number of topical complaint cases received.

3.2 In addition to the complaints received during the year, we had 1,056 cases (including 26 "re-opened" cases[2]) brought forward from last year. This meant a total of 6,085 complaints for processing this year.

Fig. 3.1

Enquiries and Complaints Received			
Year	Enquiries	Complaints	
		Total	Excluding topical complaints*
2007/08	12,169	4,987	N.A.
2008/09	14,005	5,386	4,533
2009/10	13,789	4,803	4,410
2010/11	12,227	5,339	4,712
2011/12	12,545	5,029	4,849

* Statistics on topical complaints started to be kept from 2008/09 onwards.

3.3 The number of enquiries rose slightly this year, with 12,545 received compared with 12,227 last year. A breakdown on the number of enquiries and complaints received and processed in the past five years is given in **Table 1**.



Topical Complaints

3.4 There were significantly fewer topical complaints (see **para. 2.5** in Chapter 2) this year. The total number of secondary cases arising from all topical complaints reduced from 627 last year to 180, comprising now only about 3.6% of all complaints received. The construction of a high-rise office building attracted the largest number of complaints (74 secondary cases) from nearby property owners and residents. A shop suspected as hiring illegal immigrants generated 42 secondary cases, while the complaints by a group of sports associations about unreasonable procedures in hiring Government sports facilities accounted for 17 secondary cases. The Government fiscal measure of giving $6,000 to Hong Kong residents, a department's advertisement which contained simplified Chinese characters and the environmental hygiene problems at a locality also each gave rise to 10 secondary cases, apart from other smaller clusters of topical complaints.

[1] For counting purposes, each group of topical complaints is recognised by a "leader case" and the rest are taken as "secondary cases".

[2] This category captures those cases which had been closed in previous years for being unpursuable (for example, the complainant was untraceable) but which subsequently became pursuable (the complainant contacted us again) and thus were re-opened for inquiry in the current year.

Fig. 3.2

Mode of Lodging Complaints					
Mode	**2007/08**	**2008/09**	**2009/10**	**2010/11**	**2011/12**
In person	251	370	413	634	573
In writing –					
by complaint form	486	1,300	863	544	518
by letter through post	1,829	936	870	882	947
by fax	753	890	764	766	657
by email	1,380	1,515	1,362	1,954	1,783
By telephone	288	375	531	559	551
TOTAL	**4,987**	**5,386**	**4,803**	**5,339**	**5,029**

Mode of Lodging Complaints

3.5 Similar to last year, 77.7% of the complaints received were in writing and email remained the most common channel used, accounting for 35.5%. The use of the post seemed to have regained popularity, with 18.8% of all complaints lodged in this mode, compared with 16.5% last year. Figures in the past five years are given in **Fig. 3.2**.

Complaints Handled

3.6 We were able to complete processing 86.1% of all cases received during the year plus those brought forward from last year. Of the 5,237 cases which we completed processing, we pursued 2,677, while the rest were non-pursuable (see **Fig. 3.3**). Among those pursued, 2,492 (93.1%) were concluded by way of inquiry, 163 by full investigation (6.1%) and 22 (0.8%) by mediation.

3.7 The non-pursuable cases included those that we could not investigate due to restrictions by law or jurisdictional limitation (see **Chapter 1**) and those that were *withdrawn* by the complainant or *discontinued* by us after initial inquiry. There were also cases *not undertaken* because further inquiry is considered unnecessary for the following reasons:

- a *prima facie* case of maladministraton is not established;
- the complainant is merely expressing opinions or seeking assistance;
- the complainant has refused to consent to disclosure of personal data, necessary for our inquiries;
- the organisation concerned is already taking action on the matter; or
- there is another authority for the matter.

Fig. 3.3

Complaints Processed in 2011/12		
	Cases Processed	**Percentage**
Cases Not Pursuable	2,560	48.9%
Cases Pursued and Concluded	2,677	51.1%
Total	**5,237**	**100%**



Most Popular Targets of Complaint

3.10 This year the league of the "top ten" organisations most frequently complained against based on the number of complaints we received (excluding those not pursuable) looked familiar, with a few changes, compared to the league of last year (see **Table 6**). The top four were the same as last year, though the Lands Department came down from the first to the third, moving the Food and Environmental Hygiene Department and the Housing Department to the first and second positions respectively, while the Buildings Department remained at fourth.

3.11 The decrease in the number of complaints directed at the Lands Department was mainly attributable to two groups of topical complaints last year relating to the unauthorised development works in the New Territories, which had also brought the Environmental Protection Department and the Planning Department into the league at the fifth and sixth positions last year. Both departments dropped out from the league this year.

3.12 The Leisure and Cultural Services Department rose from the tenth to the fifth position this year, while the Water Supplies Department came in as tenth.



Major Causes for Complaint

3.8 Similar to previous years, "error, wrong decision or advice" was the most common cause for complaint. Based on the allegations made by the complainants, the top five causes for complaint were:

- error, wrong decision or advice (35.4%);
- delay (10.6%);
- ineffective control (10.4%);
- negligence, omission (7.7%); and
- staff attitude (6.3%).

More details are given in **Table 3**.

3.9 Based on full investigations into cases, the top five forms of maladministration substantiated or partially substantiated were:

- delay (28.2%);
- failure to follow procedures (13.7%);
- error, wrong decision or advice (13.7%);
- lack of response to complaints (9.4%); and
- ineffective control (7.7%).

More details are given in **Table 8**.

Outcome of Investigations and Inquiries

3.13 We concluded 163 complaints by full investigation, with 62 (38.0%) *substantiated, partially substantiated* or *substantiated other than alleged*. The outcome of our full investigations is summarised in **Fig. 3.4**.

Fig. 3.4

Substantiation Rates of Complaints Concluded by Full Investigation

Classification	No. of Complaints	Percentage
Substantiated	33	20.2%
Partially substantiated	25	15.3%
Substantiated other than alleged	4	2.5%
Unsubstantiated	100	61.4%
Inconclusive	1	0.6%
Total	**163**	**100.0%**

3.14 Of the 2,492 inquiry cases concluded, inadequacies or deficiencies were found in 685 (27.5%). Irrespective of whether inadequacies or deficiencies were found, we would suggest improvement measures whenever such were called for. **Table 9** gives the details.

Direct Investigation

3.15 We completed five direct investigations during the year and examined the subjects of conservation of country parks, the water billing system, special education services for students with emotional and behavioural difficulties, monitoring of private residential care homes for the elderly and granting of short term tenancies. Another five direct investigations were in progress at the end of the year.

3.16 We completed 23 direct investigation assessments this year. The more significant ones covered subjects such as water mains maintenance, traffic facilities and student service vehicles, unauthorised change of land use, applications for public housing, stray dogs and cats, textbook pricing, transfer of hawker licences and private columbaria.

3.17 A list of the direct investigations and selected direct investigation assessments completed is in **Annex 5**.



Recommendations

3.18 On completion of 163 full investigations we made 134 recommendations. We also made 35 recommendations after five direct investigations. Among this total of 169 recommendations, 151 (89.3%) of them have been accepted by the organisations for implementation and 18 (10.7%) were still under consideration as at 31 March 2012.

3.19 For inquiry cases, we made a total of 99 suggestions for improvement on conclusion of our inquiries in the year, mostly to the Food and Environmental Hygiene Department and Lands Department. A breakdown of the suggestions by organisations is in **Table 9**.

Our Performance

3.20 Our performance pledges and record of achievement are listed in **Annex 14**. As in last year we were able to meet our pledges fully in respect of answering enquiries by telephone and in person and in arranging talks. For enquiries in writing, we answered 78.0% of them in five working days and 22.0% in six to ten working days, similar to last year's figures of 77.7% and 21.9%.

3.21 On complaint handling, we acknowledged and completed initial assessment of almost all complaints received within five working days but were unable to meet the pledged time frame of ten working days in four cases (see **Fig. 3.5(a)**). For processing cases outside jurisdiction or under restriction, we exceeded the target timeframe of 15 working days in 1.5% of the cases, compared with 2.1% last year (see **Fig. 3.5(b)**).

3.22 We continued to improve in the efficiency in handling cases requiring further processing, concluding 79.3% of the cases within three months, compared with 74.5% last year. Same as last year, there were 0.9% of the cases not concluded within our pledge timeframe of six months (see **Fig. 3.5(c)**).

3.23 While we always strive to speed up our processing of complaints and meet our performance pledges, there are factors not within our control that will affect the process, such as complexity of the case and new developments mid-stream.



Fig. 3.5

(a) Response Time for Acknowledgement/Initial Assessment			
Year	Response Time		
	Within 5 working days (target : >80%)	Within 6-10 working days (target : <20%)	More than 10 working days
2007/08	99.9%	0.06%	0.03%
2008/09	99.8%	0.18%	0.02%
2009/10	99.9%	0.11%	0.00%
2010/11	99.8%	0.18%	0.00%
2011/12	99.4%	0.53%	0.09%

(b) Processing Time for Cases Outside Jurisdiction or Under Restriction			
Year	Response Time		
	Within 10 working days (target : >70%)	Within 11-15 working days (target : <30%)	More than 15 working days
2007/08	88.1%	10.3%	1.6%
2008/09	77.2%	19.6%	3.2%
2009/10	78.9%	16.3%	4.8%
2010/11	83.4%	14.5%	2.1%
2011/12	89.2%	9.3%	1.5%

(c) Processing Time for Other Cases Concluded			
Year	**Response Time**		
	Less than 3 months (target : >60%)	**Within 3-6 months (target : <40%)**	**More than 6 months**
2007/08	56.5%	41.5%	2.0%
2008/09	65.9%	32.3%	1.8%
2009/10	54.7%	43.2%	2.1%
2010/11	74.5%	24.6%	0.9%
2011/12	79.3%	19.8%	0.9%

Overview

3.24 The number of individual complaints (i.e. excluding secondary topical complaints) pursued this year increased by more than 5%. However, with streamlined procedures and dedication of staff, we managed to achieve a higher percentage of completed cases during the year, with a larger proportion concluded within three months. Meanwhile, we maintained emphasis on thoroughness of our probes through full investigation where necessary and at the same time endeavoured to resolve more suitable cases by mediation.

3.25 We will keep up our effort to bring greater satisfaction to the public we serve.



Chapter 4

Reward and Challenge

Enhancing Quality Administration



4.1 As noted in Chapter 2 (**paras. 2.26** and **2.27**), on conclusion of our inquiries and investigations we make recommendations to the organisations concerned with an aim to improve the quality of administration, apart from suggesting remedy to the complainant where appropriate. Most of our recommendations are accepted by the organisations and we keep our eyes on them until they have been implemented by the organisations, resulting in tangible improvement to their operations and services. During the year under report, the measures introduced by organisations in implementing our recommendations fell broadly into the following categories:

(a) guidelines for clarity, consistency or efficiency in operation;

(b) better arrangements for inter-departmental coordination;

(c) measures for better public enquiry/ complaint handling;

(d) measures for better client services;

(e) measures for more effective regulation or control;

(f) clearer and more reasonable rules;

(g) clearer and more timely information to the public; and

(h) training for staff.

4.2 Specific examples are given in **Annex 10**. Enhancing guidelines for staff and disseminating clearer and more timely information for the public were the two categories where most recommendations were made.

Mediating Disputes

4.3 As reported last year we had updated our internal procedures for mediation and encouraged staff to put in greater effort in handling cases by mediation. This year our renewed efforts continued to bear fruits. 22 cases were successfully concluded by mediation. They concerned matters such as car parking facilities for people with disabilities, repair of water pipes, recovery of works costs and use of public leisure facilities.

4.4 Particularly worth mentioning was a group mediation case in which 18 organisations lodged separate complaints against a department for some allegedly unreasonable measures. Our preliminary assessment of the complaints was that the department should have good reasons for the measures but there could be improvements or compromise that would ease the complaining organisations' concerns. Initially both sides were uncertain about the usefulness of mediation as a means to resolving the matter under complaint. With persuasion we eventually were able to get both sides sitting together and, after hours of mediation, signing an agreement to settle the matter, resulting in a win-win solution.



Transparent Government and Access to Information

4.5 As noted in **para. 4.2** above, a significant number of improvement measures adopted by the organisations upon our recommendation is related to the dissemination of information to the public. This underlined the importance of transparent government – providing clear and timely information to the public can avoid complaints.

4.6 The other aspect of transparent government is the readiness of public bodies to provide information to the public upon request. In this connection the Administration has promulgated a Code on Access to Information, which underpins the Government policy to make available to the public Government-held information as far as possible unless there are valid reasons for not doing so. Our Office is conferred with the duty and power to handle complaints about breaches of the Code (see **para. 1.5** of Chapter 1). This year we received 35 complaints relating to the Code, a smaller figure compared with last year but still relatively high when compared with three or four years ago, as shown in **Fig. 4.1** below:

Fig. 4.1

Number of Code-related Complaints in the Past Five Years

Year	No. of Complaints Received
2007/08	17
2008/09	24
2009/10	46*
2010/11	42*
2011/12	35

* The figures in 2009/10 and 2010/11 each include 3 cases not recognised as such complaints in the year when they were received but so classified on conclusion in the sunsequent year.

4.7 It must be noted that, while the Code is an important means to ensure open and accountable government and to protect the citizen's civil and political rights, its effectiveness can be hampered if Government does not keep good records of their actions and decisions. In a complaint case we were informed by the department concerned that there was a change in policy in an area relevant to our investigation. When we asked for the background to and documentation of the policy change, we were told that there was no written record of this. In other cases we found that, while the departments had the policy to recover money owed to them many years ago, the supporting documents were destroyed after a certain period. This is highly unsatisfactory, as the citizens would legitimately doubt if they had really owed the money claimed. We consider it important for Government to develop clear guidelines for departments on proper record keeping.

Systemic Issues Revealed

Compartmental Mentality and Lack of Determination



4.8 This is a problem that keeps appearing in our complaint handling and is typically reflected in street management issues. We continued to see cases where, when unauthorised structures were involved, often the relevant departments were more concerned about whether they themselves should be the action department than how the problem could best be resolved. Departments would spend time and effort on, for example, debating if the structures were situated and affixed on Government land, or attached to a private building, so as to determine which department would have jurisdiction to take action. We agree that this would normally be a reasonable step to take. However, when this could not be quickly clarified, all departments involved should promptly put their heads together and work out a reasonable action plan, with joint action if necessary, to tackle the problem first.

4.9 Repair work for certain type of public facilities may also give rise to problems of inter-departmental coordination, resulting in delayed action. A seepage complaint at a public transport interchange next to a Mass Transit Railway station could not be quickly dealt with because some of the departments concerned were too quick to deny the matter as within their sphere of responsibility. Our investigation showed that if all the departments had taken the matter as their common problem and joined hands in searching and comparing their records diligently, the complaint could have been resolved much earlier.

4.10 Determination to tackle a problem is also a critical factor affecting the effectiveness of governance. Shop-front extension is a perennial problem criticised by many. We understand that it involves the vested, often conflicting, interests of many stakeholders. However, we also noted in individual complaint cases that the situation in a particular location could be put under control if effective measures were taken. For example, with adequate local consultation, Government could regularise shop-front extension at certain locations considered acceptable or even welcome by the local community on the one hand and take strict enforcement action at black spots on the other. This will require strong Government determination but this is exactly what is needed to tackle perennial problems.



Accountability

4.11 The report last year touched on the question of accountability in the context of contractors and consultants engaged by departments and pointed out that responsibility must not be contracted out together with the service. Among the examples mentioned was the Housing Department, which has most of its estate management services outsourced. We noted then that often, when the department received a complaint about poor estate management service, it would simply refer it to the outsourced management company for handling without monitoring how the complaint was handled. The department has since improved – similar referrals without follow-up were rarely observed in our inquiries into complaints during the year.

4.12 Nevertheless, we encountered a disappointing case with the Agricultural, Fisheries and Conservation Department in connection with a cat colony programme run by an animal welfare organisation under the theme of “catch, neuter and return”. The programme had been subsidised by the department for a number of years. Under the programme, complaints received by the department about nuisance of stray cats in a colony covered by the subsidy would be referred to the animal welfare organisation for handling. The department would reasonably be expected to have monitored the operation of the programme and evaluated its effectiveness. However, our investigation revealed that the department had collected only scanty data regarding the programme, never monitored the organisation’s handling of complaints from members of the public and made no evaluation of the programme’s effectiveness. We consider this a bad example of accountability.

Tackling Systemic Issues

4.13 Apart from addressing systemic issues as and when these are revealed in complaint case handling, we also conduct direct investigations into subjects that we have found to be prevalent or having wide implications. As mentioned in **para. 3.15** of Chapter 3, we completed direct investigations during the year on five different subjects.

4.14 The Sai Wan Incident in 2010, in which extensive unauthorised works were found to have been carried out in a country park enclave and widely reported by the media, drew our attention to the need to examine Government actions on conservation of country parks. Our investigation found that, despite a Government decision in the late 1990s to take concrete action to protect country park enclaves, actions by the relevant departments had been very slow until the Sai Wan Incident surfaced. We recommended the Development and Environment Bureaux to urge their executive departments to expedite action and ensure all enclaves were properly protected.



4.15 We examined the water billing system after receiving many complaints about unreasonable water bills. We found that the Water Supplies Department's highly automated billing system was not complemented by the necessary support mechanisms and procedures such as timely data input, faultless system design, and an efficient mechanism to rectify system inadequacies once revealed. We recommended a series of improvement measures to the department, from meter reading and testing to system checks and from communication with consumers to staff training.



4.16 On receiving an enquiry from a Legislative Councillor we initiated a direct investigation into the special education service for students with emotional and behavioural difficulties. We noted that some students had to wait for a very long time before they could get a place in a School for Social Development, while the use of existing school places and residential places was not maximised. We recommended the Education Bureau and Social Welfare Department to take effective measures both to expedite the processing of applications and to meet the unsatisfied demand for the school places.

4.17 Alerted by some media reports, we investigated the Social Welfare Department's monitoring of private residential care homes for the elderly and found the monitoring lax. We recommended the department to review the relevant legislation and code of practice and update the service requirements, step up inspections and follow-up actions, disseminate more information of the homes to facilitate public selection and promote accreditation of such homes.

4.18 We also looked into the Government mechanism for granting short term tenancies at nominal rent and found the Lands Department's arrangement for considering applications for such tenancies unclear and loose, its monitoring of compliance grossly inadequate, its enforcement action weak and the tenancy renewal system lax. We recommended the department to formulate clear objectives and procedures for the vetting, renewal and monitoring of such tenancies and step up its enforcement actions.

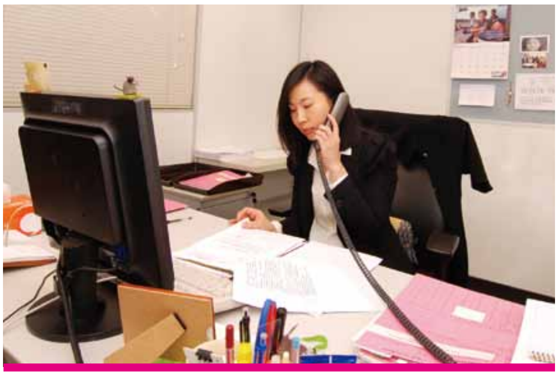
Fig. 4.2

All Review Cases						
Reason / Result	New evidence		New perspective		Outside jurisdiction	Total
	Yes	No	Yes	No		
Decision varied	2	–	2	–	–	4
Decision upheld	–	33	–	–	2	35
						39

Challenges from Parties

Re-assessment of Cases

4.19 As explained in **Chapter 2**, our Assessment Team examines all incoming complaints and determines whether we can and should pursue them. Cases are screened out that fall outside our jurisdiction, or for which we are restricted by law to investigate, or that are otherwise inappropriate for us to pursue. Complainants disagreeing with our decision may request to have their cases re-assessed.



4.20 During the year we received 248 requests for re-assessment, with 95 subsequently re-opened for inquiry.

Review of Cases

4.21 For cases that we have concluded after examination of the issues under complaint, complainants dissatisfied with our findings or conclusions may seek a review. Such requests will be considered according to laid down procedures (see **para. 2.20** of Chapter 2). If it is considered justified, a review will be conducted.

4.22 This year we received 61 requests for review. We declined 22 of the requests and conducted 39 reviews. I varied my decision in four cases after review and upheld my original decision for the remaining 35, as shown in **Fig. 4.2**.

4.23 Three of the cases reviewed were by way of full investigation, with my decision varied in two. Details of these cases are given in **Annex 12**.

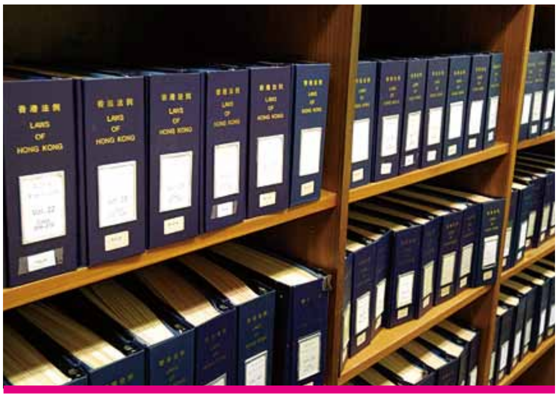
Complainants' Responsibilities

4.24 Complainants' expectations of our work vary, which sometimes affect our handling of their cases. While some complainants give us voluminous materials, containing lengthy accounts of events but without spelling out clearly the matters they specifically feel aggrieved with, others rely too heavily on our inquiry, providing minimal information and expecting us to collect all the evidence by our own. In the former scenario, although we appreciate the effort of the complainant in providing the rich information, we need to know the crux of the complaint in order to focus our inquiry. In the latter scenario, valuable time and resources will be wasted if complainants withhold available relevant information from us at the outset. Cooperation from the complainants in providing us with clear and necessary information can no doubt help expedite our inquiries. To let complainants understand better what they can do to help our inquiry work and hence resolution of their complaints, we have drawn up a Complainants Charter. This is discussed more in **para. 5.11** in Chapter 5.

Judicial Review and Litigation

4.25 A complainant not satisfied with my decision may, apart from requesting a review by me, seek a judicial review by the court.

4.26 During the year, a complainant applied for judicial review against my decision on her complaint against a Government department despite that we had already conducted two reviews of her case at her request. The application was refused by the Court of First Instance in May 2011, as there were no reasonable grounds for the application.



4.27 As reported last year, a complainant had appealed against the court's decision of not granting leave for its application for judicial review. That appeal was dismissed and the complainant appealed further to the Court of Appeal who dismissed the appeal with costs to our Office in June 2011. The appellant applied for leave to appeal against the judgment of the Court of Appeal. In February 2012 the Court of Final Appeal dismissed the appeal on the grounds that it disclosed no reasonable grounds for the application.

4.28 In October 2011 a complainant lodged a claim with the Small Claims Tribunal against our Office as a co-defendant in connection with our decision on the claimant's complaint against a Government department. Following a call-over meeting, a mention hearing was held in February 2012. The next hearing was scheduled for April 2012.

Overview

4.29 As in the past, our independent inquiries and investigations have help draw to the Administration's attention not only to mistakes and deficiencies in specific instances but also underlying and systemic flaws. We are pleased that most our recommendations made after inquiries and investigations have been accepted by the Administration and brought about concrete improvement in a wide range of areas. Publication of the results of our direct investigations has attracted wide media coverage and raised awareness of the community on a number of issues of significant public concern. We are also pleased to note that we have made progress in the use of mediation as a means to resolve complaints, resulting in positive outcomes for both the organisations concerned and the complainants.

4.30 We will continue to review our procedures whenever we receive feedback from our stakeholders, particularly dissatisfactions expressed towards our work. We will strive to maintain the quality of our work at the highest standard.



Chapter 5

Office Administration

Staffing

5.1 Our investigation officers belong to the Complaints Officer grade which forms the backbone of our Office. Apart from internal promotion, we recruit people with different years of experience and background in public administration directly to different ranks of the grade. This strategy has worked well and will continue. This year, we started recruiting more graduates with no or little working experience at the entry rank of Assistant Complaints Officer. By offering a clear career path and early nurturing of home grown talents, we aim to promote the long-term development of the grade. As in the previous years, we supplemented our regular workforce with temporary investigation officers who had rich experience in public administration to tide us over seasonal fluctuations in caseload.

5.2 A total of nine investigation staff (one each at Chief and Senior levels, two at Complaints Officer level and five at Assistant level) were appointed. Our organisation chart is at **Annex 16**.

Fig. 5.1

Staff Complement			
Breakdown of staff	**As at 31.3.2010**	**As at 31.3.2011**	**As at 31.3.2012**
Directorate	4	4	4
Investigation	51	54	55
Administrative & support	47	48	49
Total regular staff	**102**	**106**	**108**
Temporary investigation staff: equivalence to full-time posts (total staff-days)	4.3 (1,146)	5.1 (1,351)	5.1 (1,356)
Temporary support staff	12	–	–
Grand total	**118.3**	**111.1**	**113.1**



Fig. 5.2 HKU Careers Fair 2012

5.3 To promote our career opportunities to university students, we participated in careers fair and recruitment talk organised by The University of Hong Kong and The Chinese University of Hong Kong. We also took part in the Education & Careers Expo held at the Hong Kong Convention and Exhibition Centre in February 2012. These initiatives, which aimed to enhance understanding of our mission and the work of our investigation officers, were well received. We plan to include more outreach activities in our annual recruitment programme.

Staff Training

5.4 In the light of the changing social environment and the increasingly demanding nature of complaint handling, we are mindful of the need to enrich our training programme so that our staff are equipped with the skills for the efficient and effective discharge of their duties.



Fig. 5.3 Recruitment talk for CUHK

5.5 We organised two rounds of induction programmes in May and November 2011 for our new recruits to facilitate their integration into the new working environment and enable them to become fully operational as quickly as practicable.

5.6 With the growing social awareness on human rights and privacy issues, we invited the Department of Justice and the Office of the Privacy Commissioner for Personal Data to deliver two seminars on "Human Rights Covenant and Practices" and "Personal Data (Privacy) Ordinance" respectively. The seminars had widened the outlook of our investigation officers on the implication and application of the relevant practices and legislation in complaint handling.



Fig. 5.4 Seminar on Personal Data (Privacy) Ordinance

5.7 To capitalise on last year's in-house mediation training, we embarked on a sponsorship scheme for investigation officers to attend more elaborate training and attain accreditation as mediators. In the year, we provided sponsorship to two officers who were successful in obtaining accreditation.

5.8 To promote occupational health and safety, we invited the Labour Department to conduct a seminar on the health hazards and safety measures in the prolonged use of computers. We also offered opportunities for six staff members to receive first aid training provided by the Auxiliary Medical Service.



Fig. 5.5 Seminar by Labour Department

Operational Manual

5.9 We conducted a major revamp of the Operational Manual for staff this year. We took this opportunity to critically review our procedures and practices with a view to enhancing the effectiveness and efficiency of complaint handling.

Complainants Charter

5.10 Recent years has seen more complainants displaying aggressive or unreasonable behaviour when they are not satisfied with the outcome of our inquiry or investigation. This year, on a few occasions, we had to resort to seeking assistance from security guards or the Police. These incidents brought into focus the need to introduce measures to protect our frontline staff from abuses.

5.11 We have drawn up a Complainants Charter (see **Annex 15**) setting out our commitments as well as complainants' responsibilities. While we endeavour to handle complaints in a professional, impartial and efficient manner, complainants should provide adequate information and lodge their complaints in a reasonable manner. We have issued guidelines to staff on how to handle complainants who behave in ways which would disrupt the operation of the Office. In addition, we have upgraded the CCTV system, to cover the reception and public areas in order to enhance office security.

Complaints against the Office

5.12 This year, we concluded 14 complaints lodged against staff manner, the Office's work practices and procedures or both. Of these complaints, one was found substantiated and two, partially substantiated. We treasured the lessons learned and provided appropriate counselling to the staff concerned.

5.13 We take every critical comment as an opportunity to review our practices afresh. These complaints serve as an important reminder that there is always room for improvement in our performance amidst the growing demand for more efficient and effective services.

Fig. 5.6

Complaints against the Office Concluded in 2011/12			
Nature	**Substantiated**	**Partially substantiated**	**Unsubstantiated**
Staff manner (e.g. delay, negligence, abuse of power, unacceptable attitude)	1	–	7
Work procedures & practices	–	–	2
Both staff manner and work practices & procedures	–	2	2
Total	**14**		



Chapter 6

Publicity and External Relations

6.1 Communication with the public and various stakeholders is an integral part of our strategy to promote and develop the ombudsman's system and inculcate a positive complaint culture. During the year, apart from disseminating our values and functions through traditional means, we also explored new channels to communicate with our stakeholders and solicit feedback.

Reaching out to the Community

Publicity Campaign

6.2 We rolled out a publicity campaign in October 2011. Our advertisement covered TV and public transport by means of video commercials, digital display panels and seatback stickers. It aimed to reach all levels of the community and to enhance public awareness of our role and functions.



Fig. 6.1 Display panel in train station



Fig. 6.2 Corporate video

Corporate Video

6.3 A brand new corporate video was developed in the first half of the year. The video elaborates the history, role and investigative powers of The Ombudsman, and helps viewers to gain a better understanding of the work of this Office. It is presented in our outreach talks and shown to visiting delegations. This video, in Cantonese, Putonghua and English, is viewable on our website (www.ombudsman.hk) and accessible through online search engines.



Fig. 6.3 Information booth at the Education and Careers Expo

Education and Careers Expo

6.4 We actively look for new opportunities to publicise our work to the community. In February 2012, we took part in the Education and Careers Expo organised by the Hong Kong Trade Development Council. We staged an exhibition booth to introduce our work and the career opportunities in our Office. We reached around 10,000 people, mainly teenagers, in this event.

Online Games and Fan Page

6.5 We attach great importance to instilling the concept of good governance and positive complaint culture amongst the public. In view of the popularity of the internet as an effective promotion tool, particularly to the younger generation, we developed two online games to inform the public on our functions and jurisdictions. We planned to launch this in mid 2012. We also set up a fan page on a popular social networking platform to extend our reach to the community.



Fig. 6.4 Online game

Outreach Talks

6.6 We conducted 15 outreach talks to Government departments, public organisations and elderly centres during the year. The talks provided opportunities for direct face-to-face interaction with different sectors of the community.



Fig. 6.5 Talk for Government department

Publications

6.7 We update our publicity materials regularly to keep the public abreast of our latest news. During the year, we touched up the content of our publicity leaflets and produced a new publicity poster. Members of the public are welcomed to visit our Resource Centre, website or District Offices of the Home Affairs Department for access to these publications.



Fig. 6.6 Publicity leaflet and poster

Press Conferences and Media Releases

6.8 The mass media is an effective vehicle for publicising the work of the Office to the public. During the year, we held three press conferences, during which we announced the results of four anonymised complaint investigation reports and four direct investigation reports. We also declared the initiation of three direct investigations. Our efforts generated wide interest and coverage in newspapers, TV, radio and online media.



Fig. 6.7 Press conference

Fig. 6.8

Press Conferences/Public Announcements	
19 April 2011	• Announcement of findings of direct investigation on the enforcement against unauthorised building works in New Territories exempted houses • Announcement of findings of anonymised investigation into: i. Complaint against seven Government departments for delay in handling a road repair works ii. Complaint against Housing Department for failing to allocate public rental housing flats fairly
5 July 2011	• Declaration of direct investigation into the booking and utilisation of sports facilities
21 July 2011	• Declaration of direct investigation into the effectiveness of Government's administration of temporary closure of metered car parking spaces during road excavation works carried out by public utilities
15 September 2011	• Announcement of findings of direct investigation on: i. Water meter reading and billing system ii. Government measures to protect country park enclaves
9 February 2012	• Declaration of direct investigation into the regulatory measures and enforcement actions against unauthorised extension of business area of restaurants
23 February 2012	• Announcement of findings of direct investigation on special education services for students with moderate to severe emotional and behavioural difficulties • Announcement of findings of anonymised investigation on: i. Complaint about an unauthorised structure on "Government property" ii. Complaint against Agriculture, Fisheries and Conservation Deparment for failure to discharge its duties to properly handle stray cat nuisance

Working with Professionals, Community Leaders, etc.

Advisers and JPs

6.9 We value the support and counsel from our Advisers and Justices of the Peace ("JPs") under our JPs Assistance Scheme.

6.10 In November 2011, we organised a seminar on street obstruction by shops and food establishments, a perennial problem in Hong Kong. We invited representatives from Government to share their work and experiences on the subject with our Advisers and JPs. The seminar attracted over 50 participants and constructive exchange of views was achieved.

Legislative Councillors

6.11 I meet annually with Members of the Legislative Council. At this year's meeting held on 13 December 2011, I updated Members on our work and listened to their views on various issues of concern.



Fig. 6.9 Seminar on street obstruction by shops and food establishments

The Ombudsman's Awards

6.12 Recognition is important in the promotion of positive complaint culture and efficient public administration. In this connection, The Ombudsman's Awards are presented annually to honour the efforts of public organisations and their officers for exemplary performance in complaint handling and serving the public. This year's presentation ceremony was held on 17 November 2011, during which The Ombudsman presented the Awards to the Housing Department (Grand Award), the Education Bureau, Labour Department and 32 officers. Over 200 participants attended the ceremony to witness the memorable occasion.



Fig. 6.10 The Ombudsman's Awards ceremony

Fig. 6.11

Winning Organisations for 2011
Housing Department (Grand Award)
Education Bureau
Labour Department

Fig. 6.12

Individual Awards for 2011

Organisation	No. of Awardees
Airport Authority	1
Buildings Department	1
Chief Executive's Office	1
Civil Engineering and Development Department	2
Correctional Services Department	1
Customs and Excise Department	2
Drainage Services Department	2
Efficiency Unit	1
Employees Retraining Board	1
Food and Environmental Hygiene Department	1
Highways Department	1
Hospital Authority	2
Housing Department	1
Immigration Department	2
Inland Revenue Department	2
Judiciary	1
Land Registry	1
Legal Aid Department	1
Mandatory Provident Fund Schemes Authority	2
Marine Department	1
Securities and Futures Commission	1
Social Welfare Department	1
Student Financial Assistance Agency	2
Water Supplies Department	1

Liaising with Overseas and Mainland Counterparts

International Liaison

6.13 I continued to maintain close ties with our overseas counterparts throughout the year. I attended the International Ombudsman Institute ("IOI") Board Meeting in Livingstone, Zambia in late October 2011. In December 2011, I joined the Asian Ombudsman Association's Conference and Board Meeting in Tokyo and Shizuoka, Japan. These occasions are important for gleaning good practices from different ombudsman's systems and showcasing ours.

6.14 We are going to co-organise with the Commission Against Corruption, Macao a three-day training programme for IOI members in the Asia and Australasian & Pacific regions in May 2012. The programme will focus on complaint handling skills, application of technology and psychology in complaint management. We have invited speakers from overseas ombudsman offices and a local university to share their insights with participants.

Mainland Liaison

6.15 We have maintained an exchange programme with the China Supervision Institute since 1996. In September 2011, I led a delegation of seven members to Beijing and Chongqing for five days. During the period, we met with officials from various Government offices to learn about each other's systems and modes of monitoring public administration. The visit enhanced mutual understandings and cooperation with our mainland counterparts.



Fig. 6.13 The delegation met the Minister of Supervision

6.16 We welcome group visitors from other countries and regions. Many visitors are interested in learning about our jurisdictions, and comparing the difference of the various ombudsman's systems of different countries. Through sharing of experiences and information, we achieve better mutual understandings and extend our horizons in the monitoring systems of public governance. The list of visitors is at **Annex 18**.

Looking Ahead

6.17 We will continue to gauge public awareness, perception and expectation on our services. Based on the feedback received, we will refine our operational procedures and adjust our publicity strategies to meet the changing needs of the community. We value the views of the public and we continue to take reference from our stakeholders and counterparts worldwide for promoting a fair and efficient public administration.





Annexes

Annex 1

Glossary of Terms

Complaint

A complaint is a specific allegation of wrong doing, unreasonable action or defective decision which affects and aggrieves the complainant.

Complaint Not Undertaken

This is a complaint which The Ombudsman has decided not to process further after considering all its circumstances, e.g. whether there is sufficient *prima facie* evidence of maladministration.

Direct Investigation ("DI")

This is an investigation initiated in the public interest even in the absence of complaint and generally on matters of a systemic nature or wide community concern.

Direct Investigation Assessment

This refers to the preliminary examination and assessment on a potential subject for direct investigation. Where our direct investigation assessment finds no significant maladministration or the organisation concerned has made proactive improvement, we will not initiate a direct investigation. We will conclude our study and offer our findings to the organisation. Where appropriate, we make recommendations for improvement.

Discontinuation of Complaint

This is the cessation of inquiries into a complaint for reasons such as insufficient information or evidence from complainants and lack of complainants' consent for access to their personal data.

Enquiry

An enquiry is a request for information or advice.

Full Investigation

This refers to an in-depth inquiry, usually into complex or serious complaints and usually with recommendations for improvement or remedy upon conclusion.

Inconclusive

This is a situation where, at the end of a full investigation, The Ombudsman is not prepared to draw any conclusion on a complaint because the evidence is conflicting, irreconcilable, incomplete or uncorroborated.

Inquiry

For general complaint cases, we may use this procedure to resolve complaints more speedily. We ask the organisation under complaint to respond to us and, if we see fit, the complainant in parallel. We will examine such response, the complainant's view on it, if applicable, together with any other relevant information or evidence we have collected. We will, in conclusion, present our findings to the complainant and make suggestions to the organisation for remedy or improvement where necessary. Where deeper and fuller probing is needed before we can conclude the case, we will start a full investigation.

Investigation

This may be a full investigation into a complaint or a direct investigation without a complaint.

Maladministration

This is defined in The Ombudsman Ordinance. It basically means poor, inefficient or improper administration including unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for a person.

Mediation

This is a voluntary process carried out where the complainant and the organisation under complaint agree to meet to discuss the complaint and to explore mutually acceptable solutions. Investigators from this Office act as impartial facilitators.

Outside Jurisdiction

This refers to the situation where the action or organisation subject to complaint is not within The Ombudsman's jurisdiction under The Ombudsman Ordinance.

Restrictions on Investigation

These are the restrictions on investigation under The Ombudsman Ordinance.

Substantiated other than Alleged

This is where a complainant's allegations are unsubstantiated but The Ombudsman discovers other aspects of significant maladministration and comments on those other deficiencies.

Substantiated, Partially Substantiated and Unsubstantiated

These reflect the varying degrees of culpability of an organisation under complaint on conclusion of a full investigation.

Topical Complaints

These are complaints on a particular social or topical issue. They are essentially against the same action or decision by the organisation under complaint.

Withdrawal of Complaint

This is a complainant's voluntary withdrawal of a complaint. However, depending on the nature or gravity of the allegations, The Ombudsman may still pursue the case.



Annex 2

List of Scheduled Organisations

Organisations Listed in Part I of Schedule 1, Cap. 397

1. All Government departments/agencies except the Hong Kong Auxiliary Police Force, the Hong Kong Police Force, the Independent Commission Against Corruption,and the Secretariat of the Public Service Commission
2. Airport Authority
3. Auxiliary Medical Service
4. Civil Aid Service
5. Consumer Council
6. Employees Retraining Board
7. Equal Opportunities Commission
8. Estate Agents Authority
9. Financial Reporting Council
10. Hong Kong Arts Development Council
11. Hong Kong Examinations and Assessment Authority
12. Hong Kong Housing Authority
13. Hong Kong Housing Society
14. Hong Kong Monetary Authority
15. Hong Kong Sports Institute Limited
16. Hospital Authority
17. Kowloon-Canton Railway Corporation
18. Legislative Council Secretariat
19. Mandatory Provident Fund Schemes Authority
20. Office of the Privacy Commissioner for Personal Data
21. Securities and Futures Commission
22. Urban Renewal Authority
23. Vocational Training Council
24. West Kowloon Cultural District Authority

Organisations Listed in Part II of Schedule 1, Cap. 397

1. Hong Kong Auxiliary Police Force
2. Hong Kong Police Force
3. Independent Commission Against Corruption
4. Secretariat of the Public Service Commission

Annex 3

Circumstances Where Complaints are not Followed Up or Investigated

Actions not Subject to Investigation - Schedule 2, Cap. 397

1. Security, defence or international relations
2. Legal proceedings or prosecution decisions
3. Exercise of powers to pardon criminals
4. Contractual or other commercial transactions
5. Personnel matters
6. Grant of honours, awards or privileges by Government
7. Actions by the Chief Executive personally
8. Imposition or variation of conditions of land grant
9. Actions in relation to Hong Kong Codes on Takeovers and Mergers and Share Repurchases
10. Crime prevention and investigation actions by Hong Kong Police Force or Independent Commission Against Corruption

Restrictions on Investigation of Complaints - section 10(1), Cap. 397

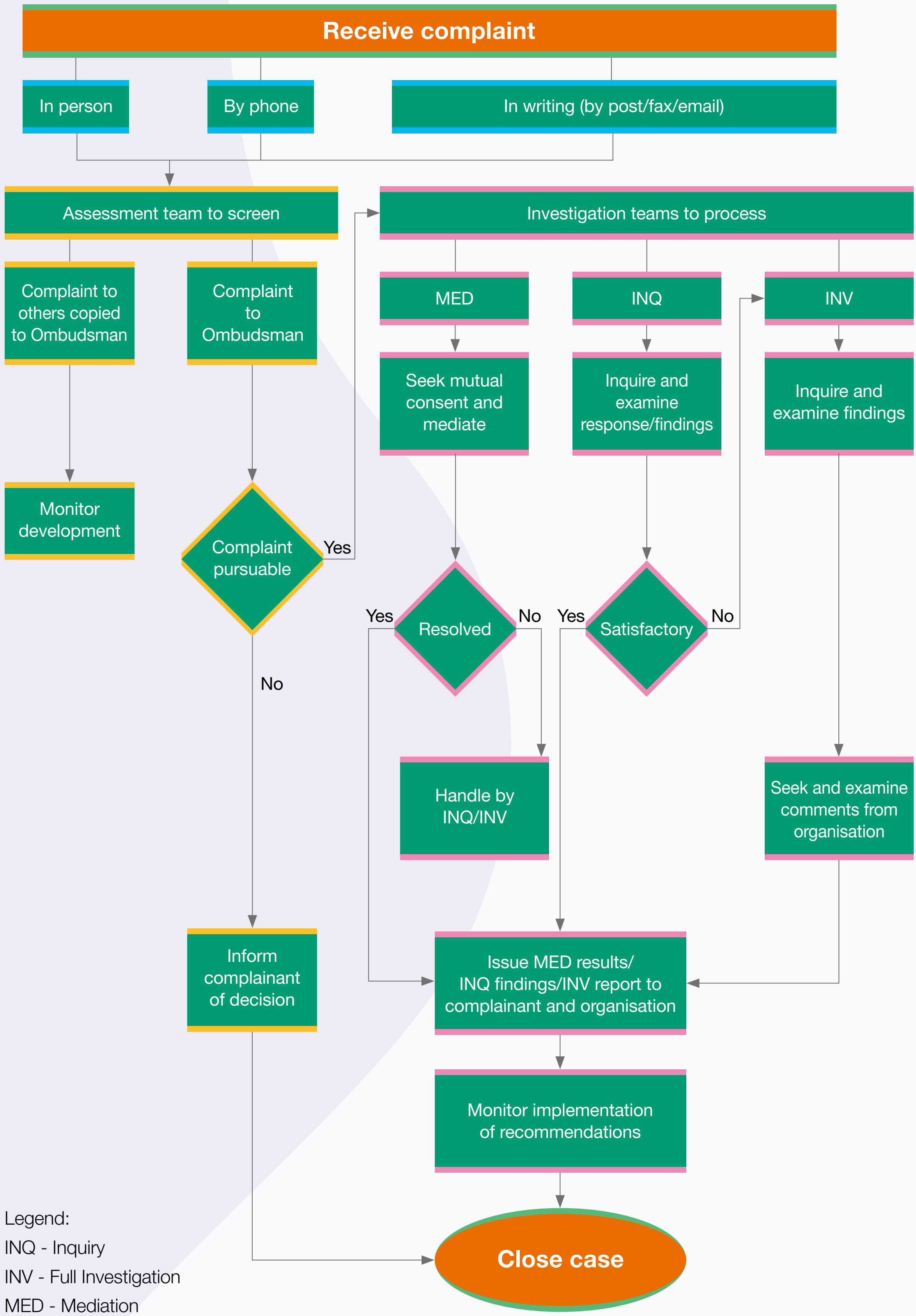
1. Complainant having knowledge of subject of complaint for more than two years
2. Complaint made anonymously
3. Complainant not identifiable or traceable
4. Complaint not made by person aggrieved or suitable representative
5. Subject of complaint and complainant having no connection with Hong Kong
6. Statutory right of appeal or remedy by way of legal proceedings (except judicial review) being available to complainant

Circumstances Where The Ombudsman may Decide not to Investigate - section 10(2), Cap. 397

1. Investigation of similar complaints before revealed no maladministration
2. Subject of complaint is trivial
3. Complaint is frivolous or vexatious or is not made in good faith
4. Investigation is, for any other reason, unnecessary

Annex 4

Flow Chart on Handling of a Complaint



Legend:
INQ - Inquiry
INV - Full Investigation
MED - Mediation

Annex 5

Index of Direct Investigations and Direct Investigation Assessments Completed

Direct Investigations	
OMB/DI/227	Government Measures to Protect Country Park Enclaves
OMB/DI/218	Water Meters Reading and Billing System
OMB/DI/216	Special Education Services for Students with Moderate to Severe Emotional and Behavioural Difficulties
OMB/DI/147	Mechanism for Monitoring Private Residential Care Homes for the Elderly
OMB/DI/219	Granting of Short Term Tenancies at Nominal Rent
Direct Investigation Assessments (Selected)	
OMB/DI/208	Maintenance of Water Mains
OMB/DI/225	Consultation Process Involving Traffic Signs and Facilities
OMB/DI/230	Enforcement Actions on Unauthorised Change of Land Use
OMB/DI/226	Processing of Public Rental Housing Applications
OMB/DI/191	Handling of Stray and Abandoned Dogs and Cats by the Agriculture, Fisheries and Conservation Department
OMB/DI/232	Monitoring of Textbook Pricing
OMB/DI/235	Monitoring of Student Service Vehicles Operations
OMB/DI/229	Mechanism for Coordinating Emergency Repairs for Traffic Lights Failure
OMB/DI/239	Succession and Transfer of Fixed Pitch Hawker Licences
OMB/DI/234	Regulation of Private Columbaria

Annex 6

Summaries of Direct Investigations Completed

Development Bureau ("DEVB"), Environment Bureau ("ENB"), Planning Department ("Plan D"), Agriculture, Fisheries and Conservation Department ("AFCD"), Environmental Protection Department ("EPD") and Lands Department (Lands D")

Case No. OMB/DI/227 – Government Measures to Protect Country Park Enclaves (Investigation declared on 25 August 2010 and completed on 5 September 2011)



Background

In June 2010, a number of complaints were received from the public about the development works at a country park enclave ("enclave") bordering Sai Kung East Country Park ("the Sai Wan Incident"). The complainants alleged that Government had failed to prepare a statutory plan for the site, thereby creating a loophole for unauthorised development that caused damage to the land. Against this background, The Ombudsman initiated a direct investigation to examine whether:

(1) Government had taken adequate measures to protect such enclaves; and

(2) the Administration had taken appropriate follow-up actions in respect of the Sai Wan Incident.

Country Park Enclaves

2. Enclaves are villages and agricultural lands adjacent to or surrounded by country parks. Before the Sai Wan Incident, AFCD considered villages and agricultural lands compatible with the natural environment of country parks. In the designation of country parks, Government should not adversely affect the legitimate rights of villagers and landowners (including the right to build small houses) so as to avoid objections and compensation claims. When designating sites as country parks, AFCD, therefore, usually excluded from country parks villages and agricultural lands as well as some adjacent Government lands as buffer. The areas thus excluded became enclaves and there are a total of 77 such enclaves in Hong Kong.

Government Actions on Protection of Enclaves

3. In February 1998, the then Planning, Environment and Lands Bureau ("PELB") requested Plan D to prepare statutory plans[1] for those enclaves identified as priority sites and to set the priorities and timeframe for the task so as to protect the lands and prevent damage of any form. In the same month, Plan D informed PELB that there was a need to prepare statutory plans to protect (12 country park enclaves) due to various considerations, but it had to prioritise its work due to resource constraints.

4. In June 1998, Plan D amended its proposal: the statutory plans for 2 enclaves should be prepared first, while the remaining 10 enclaves would be protected by "other means", such as incorporation into country parks.

[1] Statutory plans include Development Permission Area Plans and Outline Zoning Plans.

5. In the same month, PELB indicated to Plan D that "it is not feasible to include the sites in country parks … the option to resume private lands for conservation purpose (has been ruled out) … there simply is no other feasible means besides statutory plans". PELB instructed Plan D to give priority to 5 of the 12 selected enclaves with higher conservation value in its preparation of Development Permission Area Plans ("DPAPs").

6. In July 1999, Plan D informed PELB that the statutory plan of one of the 5 enclaves had already been gazetted, while the plans of the remaining 4 were expected to be gazetted before 2002.

7. In April 2000, the then Planning and Lands Bureau ("PLB")[2] invited the Environment and Food Bureau ("EFB")[2] to attend an Inter-departmental Working Group meeting to review the compensation offered to people affected by development projects and planning control. At the meeting, the participants, including representatives from the two bureaux, Plan D and AFCD, agreed that "a comprehensive approach to conservation" was necessary.

Our Observations

8. We noted that after the Working Group meeting mentioned above, the policy bureaux responsible for "environment" and "planning" (including the present ENB[3] and DEVB[4]) seemed to be just waiting for the gradual development of "a comprehensive approach to conservation", without paying further attention to the lack of expeditious follow-up action for the protection of enclaves, which was originally considered a priority task. However, the "comprehensive approach to conservation" proposed at the meeting was in fact only a preliminary idea. There was no specific measures for implementation. We considered that the Administration should not have shelved its original decision of giving special priority to 5 enclaves.

9. Up to May 2010, Plan D had completed statutory plans for only 8 of the 12 enclaves mentioned in paragraph 3. As to the 5 sites assessed to deserve special priority action (paragraph 5), Plan D had prepared statutory plans for only 2.

10. The policy bureaux for environment protection (including ENB and its predecessors EFB and the Environment, Transport and Works Bureau) have a responsibility to protect enclaves at the policy level. However, between 2000 and 2010, the bureaux had not formulated any effective measures to protect the enclaves in need of priority action.

11. The performance of Plan D was far from satisfactory. It had prepared statutory plans for only 2 of the 5 special priority sites before May 2010. The policy bureaux (including DEVB and its predecessors PLB and the Housing, Planning and Lands Bureau) overseeing Plan D had also failed to discharge their responsibility of supervising the department's action on the assigned tasks.

12. Nevertheless, in the Sai Wan Incident, the departments concerned took timely and effective remedial measures on learning about the allegedly unauthorised development works at Sai Wan: DEVB and Plan D took special action to deal with the emergency situation and quickly completed the DPAP for Sai Wan, while Lands D, EPD and AFCD prosecuted the offenders, who were subsequently convicted by the Court. The way the Administration dealt with the incident deserved commendation.

13. In October 2010, the Chief Executive announced in his Policy Address that Plan D and AFCD would, based on the local situations, protect those enclaves not yet covered by statutory plans, either by incorporating them into country parks or through statutory planning control. In May 2011, the Country and Marine Parks Board ("CMPB"), advisers to the Director of Agriculture, Fisheries and Conservation, revised the criteria for designating country parks, stipulating that AFCD should take into account such factors as conservation value, geographical location, size of existing human settlements and the development pressure faced by a site, when considering whether to incorporate the site into a country park.

[2] Following the restructuring of Government in January 2000, PELB was renamed PLB. The Environment Branch, formerly under PELB, was taken over by the newly established EFB.

[3] Government restructured its policy bureaux in July 2002 and July 2007. The function concerning "environment" formerly under EFB was taken over by the Environment, Transport and Works Bureau and then by ENB established at those times.

[4] Government restructured its policy bureaux in July 2002 and July 2007. The function concerning "planning" formerly under PLB was taken over by the Housing, Planning and Lands Bureau and then by DEVB established at those times.

Recommendations

14. The Ombudsman recommended that:

(1) DEVB and ENB urge their executive departments to, as directed by the Chief Executive, expeditiously prepare statutory plans for the outstanding enclaves or incorporate them into country parks, in order to ensure that all enclaves are properly protected; and

(2) AFCD consider incorporating private lands that have conservation value into country parks in accordance with the revised CMPB criteria.

15. DEVB, ENB and AFCD accepted the above recommendations.

Education Bureau ("EDB") and Social Welfare Department ("SWD")

Case No. OMB/DI/216 –
Special Education Services for Students with Moderate to Severe Emotional and Behavioural Difficulties
(Investigation declared on 9 September 2010 and completed on 17 February 2012)



Background

Under the current education system, students "with moderate to severe emotional and behavioural difficulties" can be transferred from mainstream schools as a transitional arrangement to Schools for Social Development ("SSDs") for more intensive guidance. SSDs help students to overcome their transient adaptation problems and to improve their daily living skills so that they can return to mainstream schooling as soon as possible. Each class of SSDs comprises only 15 students to afford every student sufficient attention and counselling.

2. At present, there are seven SSDs in Hong Kong, including five boys' schools and two girls' schools, which provide day placements and day-cum-residential places.

3. We noted that students in need of SSD placements often had to wait a long time. Against this background, The Ombudsman initiated a direct investigation to examine the administration by EDB and SWD in respect of the vetting of applications and allocation of students to SSDs.

Our Findings

Shortfall in the Provision of Residential Places

4. When their applications for day-cum-residential places are approved, students will be put on the central waiting list of EDB and SWD pending allocation. Our investigation revealed that in the past years, there were over 300 applicants waiting for day-cum-residential places per month on average, and up to 60% of them had to wait six months or more before they were allocated places. The situation somewhat improved when the number of residential places increased by 40 in the 2008/09 school year, but had remained unchanged since then.

5. We considered that too long a waiting time would not only mean that applicants cannot obtain the needed services in time, but may also aggravate the emotional or behavioural difficulties of applicants such that they would become even more difficult to handle.

Inadequacies in the Mechanism for Reporting and Filling Vacancies

6. SSDs have to provide every month, in a standard form, updates to SWD on their "existing vacancies" and "estimated vacancies available soon" regarding day places and residential places. Updates can also be provided by telephone as and when necessary. With such information, SWD will activate the mechanism for filling the places. Nevertheless, SSDs tended to report mainly "existing vacancies" and they seldom provided updates on "estimated vacancies available soon". Moreover, some monthly reports submitted by SSDs were found incomplete. This showed that improvement to the mechanism for reporting and filling vacancies was needed.

7. Furthermore, there were dozens of, and sometimes over 100, residential places available on many of the cut-off dates, while the number of applicants on the central waiting list and those undergoing the SSD admission procedures still stood at several hundred. This indicated a failure on the part of EDB and SWD to fully utilise the residential places.

Circuitous and Inflexible Allocation Process

8. Once the number of vacancies is confirmed, SWD will start the process of filling those places according to the order of applicants on the waiting list. The department will notify EDB and inform the SSDs concerned within two working days. Upon receipt of SWD's notification, EDB will send the case information to the respective SSDs by post within seven working days. The whole process should be completed within nine working days. This Office considered that if SWD and EDB could shorten the time for referrals, SSDs should be able to start admission even earlier.

9. Meanwhile, as there is often a shortage of Secondary One and Two day places in some SSDs, students applying for day-cum-residential places in these two grades cannot be admitted even though there may be residential places available. We considered that EDB should be more flexible with the standard class size of 15 students, so as to allow more applicants for day-cum-residential places to be admitted to SSDs sooner.

Lengthy Admission Procedures

10. On receipts of referrals from EDB, SSDs will start their admission process. In each of the three school years from 2006/07 to 2008/09, about 200 day-cum-residential places on average were left unfilled for two months or more, just because the applicants deferred their admission. It was not until the school year 2010/11 when EDB required students to turn up for registration at the SSDs within 28 working days on receipt of admission notification did the situation improve.

Long Stay of Students in Some Cases

11. According to EDB's policy and objectives, SSDs should aim to provide more intensive guidance to students so that they may re-integrate into mainstream schooling as soon as possible. However, in each of the school years between 2006/07 and 2010/11, an average of 20% of the students stayed at SSDs for more than two years, with 6% staying for more than three years.

12. The duration of schooling in SSDs has a direct bearing on the availability of day and residential places as well as the waiting time of applicants. EDB should address the issue and improve the situation.

Recommendations

13. The Ombudsman made ten recommendations to EDB and SWD, including:

(1) to take effective measures to meet the unsatisfied demand for SSD places;

(2) to standardise the mechanism for reporting and filling available places by clearly defining "estimated vacancies available soon" and setting out details of the mechanism in circulars for stakeholders' compliance;

(3) to set up a mechanism for monitoring the reporting and filling of available places in SSDs;

(4) to shorten the time required for referring applications to SSDs;

(5) to be more flexible with the class size;

(6) to draw up guidelines for SSDs on the criteria for releasing students and remind SSDs to pay attention to and report long stay cases; and

(7) to establish a mechanism for reviewing long stay cases.

14. EDB and SWD accepted our recommendations.

Lands Department ("Lands D")

Case No. OMB/DI/219 –
Granting of Short Term Tenancies at Nominal Rent
(Investigation declared on 14 December 2010 and completed on 26 March 2012)



Background

It is Government policy to grant short term tenancies ("STTs") for temporary uses of vacant Government land that has no intended use or is not required for development in the near future. Where STTs are for non-profit-making purposes and have the "policy support" of relevant policy bureaux or Government departments, the District Lands Offices ("DLOs") concerned under Lands D will approve the applications and grant the tenancies at nominal rent.

Our Findings

2. Our investigation revealed that there was impropriety in the granting of STTs at nominal rent by Lands D and its DLOs. The details were as follows.

Confused Roles and Responsibilities

3. Lands D had not arranged and settled an agreement with other bureaux and departments on their respective roles and responsibilities in relation to the granting of STTs. No consensus had been reached between the parties on what considerations should be taken into account by the bureaux/ departments in giving their "policy support", what was the information that should be provided to DLOs, what was the level of staff in the bureaux/departments that should have the power to decide whether to give "policy support", and what were the responsibilities of the bureaux/departments and DLOs in processing applications and renewals as well as the monitoring of STTs. As a result, in handling STTs, DLOs and the bureaux/departments each followed their own principles and practice. When problems arose, they shifted the responsibility to each other.

Inadequate Justifications for Giving "Policy Support"

4. Most of the bureaux/departments had not explained in detail the justifications for their "policy support" and DLOs had never queried their decisions. As the granting of STTs at nominal rent involved Government allowing the tenants to use public resources (the land) almost for free, we considered it reasonable for DLOs to request the background information and detailed explanation from the bureaux/ departments for their "policy support". It would not amount to any undue intervention into the decisions of the bureaux/departments by DLOs. Moreover, such requests would help the bureaux/departments crystalise their thoughts when giving "policy support". This should also help DLOs and the relevant bureaux/ departments in their future monitoring of STTs.

Failing to Follow the Procedures of Tenancy Renewals

5. DLOs had not followed Lands D's guidelines to confirm with the tenants in writing their occupancy of the land before expiry of those STTs granted at nominal rent. All the tenancies were renewed automatically without first consulting those bureaux/ departments that had previously given their "policy support". This reflected that the tenancy renewal system was lax and DLOs had neglected their duties in handling the renewals.

Lack of Periodic Inspections

6. According to Lands D's guidelines, DLOs were supposed to inspect each STT site at least once every three years. In reality, however, DLOs did not comply with this requirement. Nor would the bureaux/ departments which gave their "policy support" to the tenancies conduct any inspection of the STT sites.

Failing to Take Enforcement Actions against Tenancy Breaches

7. In one case, tenancy breaches were detected on an STT site, including unauthorised building works and illegal sub-letting. The DLO concerned had already issued a "final warning" to the tenant and ordered rectification. However, no proper follow-up actions were taken afterwards and the irregularities continued after more than ten years.

8. In another case, an advertisement signboard was erected on an STT site in breach of the tenancy conditions. The DLO concerned never requested the tenant to rectify the situation, thus allowing the tenant to misuse public resources and make private gains over a long period.

Delay in Handling Applications for Regularisation

9. Another case revealed that a DLO had not started processing an application from a tenant for regularisation of an anomaly after nearly four years, thereby causing undue delay.

Recommendations

10. As the administrator of Government land, Lands D has the duty to ensure that all tenancies are granted in accordance with Government policies and that the sites are used for purposes permitted under the lease conditions.

11. For more effective management of STTs at nominal rent, The Ombudsman recommended that Lands D:

(1) formulate objectives and procedures for the vetting, renewal and monitoring of STTs at nominal rent with those bureaux/departments providing "policy support" and clearly define the roles and responsibilities of both sides to facilitate cooperation and division of work;

(2) request bureaux/departments to provide sufficient background information when giving "policy support" and state clearly the justifications for the granting/renewal of STTs to enhance future monitoring of those tenancies;

(3) duly inspect sites of STT at nominal rent once every three years as pledged in order to step up the monitoring of those sites;

(4) adopt effective measures to ensure that STT conditions are strictly enforced by its staff and all breaches by tenants are thoroughly followed up; and

(5) set up proper mechanism and performance pledges regarding applications for regularisation of tenancy breaches.

12. Lands D basically accepted our recommendations.

Social Welfare Department ("SWD")

Case No. OMB/DI/147 –
Mechanism for Monitoring of Private Residential Care Homes for the Elderly (Investigation declared on 2 June 2011 and completed on 23 March 2012)



Background

At present, 13% (over 930,000) of Hong Kong's population are aged 65 or above and the proportion of the elderly will rise to 18.7% in 2021, and reach 25.8% in 2031. The provision of adequate care services for the elderly is thus of increasing importance. Accordingly, The Ombudsman initiated a direct investigation to examine SWD's mechanism for monitoring the standard and operation of private Residential Care Homes for the Elderly ("RCHEs") and its means of facilitating public access to information relating to the RCHEs.

Observations and Comments

2. The investigation revealed the following.

3. **Regulatory Tools.** The minimum manpower requirements for RCHEs as stated in the legislation and SWD's Code of Practice ("CoP") had remained unchanged for 16 years, despite the ever-changing expectations of the community.

4. **Inspection Targets.** SWD had failed to meet its annual targets of routine inspections of private RCHEs for monitoring their services. Furthermore, it was inappropriate of the department to count the number of re-inspections (for problematic private RCHEs) towards the total number of routine inspections for all private RCHEs, because that would create an illusion that all private RCHEs are receiving a substantial number of inspections each year.

5. **Non-office Hours Inspections.** Prior to 2008, early morning inspections (before 8:45 am) were conducted once a year for all homes. However, the frequency was not maintained in recent years.

6. **Follow-up Inspections.** SWD's Guidelines on Enforcement Action rightly required staff to conduct a follow-up inspection shortly after the due date for rectification. However, in some of the cases we studied, follow-up action was not taken until long (up to ten weeks) after the due date.

7. **Information on RCHEs.** SWD posts the licensing conditions of each and every RCHE on its website. The department can penalise a non-compliant home by shortening the validity period of its renewed licence or deter future non-compliance by imposing special licensing conditions. However, the public is given no clue to appreciate such matters.

8. The SWD website also does not give much details, other than the licences, to enable the public to make informed choices of private RCHEs.

9. In the past decade, a few accreditation schemes for RCHEs have been launched by independent or non-profit-making bodies, and some private RCHEs are on their accreditation lists, albeit not too many. The SWD website, nevertheless, provides no information on (not even links to) such accreditation schemes.

Recommendations

10. The Ombudsman made six recommendations to SWD as follows:

(1) to conduct timely and regular reviews of the relevant legislation and CoP, in particular the statutory minimum requirements in respect of RCHEs;

(2) to inspect each and every private RCHE at frequencies no lower than those specified in SWD's annual targets of routine inspections;

(3) to increase the number of inspections outside office hours;

(4) to ensure that timely follow-up actions are taken against RCHEs with irregularities;

(5) to facilitate the public's selection of RCHEs by providing more information on individual homes, in particular their performance and non-compliance records; and

(6) to promote accreditation of RCHEs by providing them with more incentives for participating in accreditation schemes.

11. SWD by and large accepted these recommendations.

Water Supplies Department ("WSD")

Case No. OMB/DI/218 –
Water Meter Reading and Billing System
(Investigation declared on 10 November 2010 and completed on 9 September 2011)



Introduction

Of the complaints we received about water bills, a considerable number concerned consumers feeling aggrieved by the long time taken by WSD to deal with defective meters and associated bill adjustments, resulting in large sums of money involved.

2. Against this background, we initiated a direct investigation to examine WSD's arrangements for reading meters and billing customers, replacing and testing defective meters, and adjusting bills, with a view to identifying areas for improvement.

General Observations

3. WSD's regular monitoring programme showed that in 2010/11, 5% of the in-service meters selected for testing failed its accuracy rule. By projection 138,000 of the 2.8 million in-service meters in the territory may be defective. This was a cause for concern, and any deficiency in dealing with defective meters and related bill adjustments should warrant serious attention.

4. WSD has the power and duty to recover under-collected water charges from consumers for periods

during which the meter is found defective. In the cases studied, WSD was not unreasonable in taking action to adjust the bills concerned. It is WSD's practice to observe the consumption pattern after meter replacement and establish the need for bill adjustment before initiating action, and the consumer is given an opportunity to explain the consumption pattern if he considers the adjustment not warranted.

5. However, the manner in which such actions were carried out, particularly the long time taken in the recovery action and the lack of consideration for the consumer, was a source of much aggravation to and frustration among the complainants, indicating much room for improvement.

Deficiencies Observed

6. We identified the following deficiencies in the way WSD handled meter reading, defective meters and issue/adjustment of bills.

Insufficient Staff Training and Monitoring in Meter Reading

7. One of the main reasons for the long time taken to deal with defective meters was the failure of meter readers ("MRs") to detect defective meters during their routine readings. Our analysis showed that the training/guidance given to MRs in this aspect was limited and monitoring by supervisors insufficient. We doubted the merit of the WSD policy of not requiring MRs to know the implications of the MR codes which are used by the system to automatically trigger follow-up actions.

8. WSD introduced some improvements in June 2010 to assist MRs by adding new MR codes to record observations about vacant premises, which could indirectly help to distinguish cases of defective meters. However, the improvements were inadequate and their implementations were inconsistent among different staff. Further enhancement in staff training and monitoring was needed.

Insufficient System Checks for Detecting Defective Meters

9. Another way of detecting defective meters was the built-in checks in the system, such as the High/Low Checks in the system. Yet, even with the built-in checks, in some cases it could take over two years of low consumption before a defective meter was detected.

10. WSD subsequently tightened the rules of the High/Low Check. We consider that WSD should keep its system checks under review and where appropriate, tighten the rules or introduce new checking measures.

System Design Inadequacies and Their Rectification

11. WSD used a highly automated system to support its meter reading and billing process. However, the proper functioning of such a system would rely heavily on the proper operation of all the inter-dependent links in the chain of activities, including correct and timely input, faultless system design, and efficiency in rectifying system inadequacies once revealed. Weakness or deficiency in any one link could trigger, through the system, outcomes that could lead to highly undesirable consequences.

12. Our investigation showed that after years of operation, the system still contained inadequacies; rectification was slow and staff/computer interface was unsatisfactory. WSD should speed up the process of making changes to the system.

Insufficient Monitoring of Works Orders

13. Our investigation also showed that there was inadequate progress monitoring of works orders. WSD's monitoring reports only set out the creation dates of the works orders but not the target completion dates. Further improvement was needed.

Inadequate Meter Testing Policy

14. Under WSD's policy, meters replaced in connection with MR code NR (Zero warning but there should be water consumption) were **not** tested. Also, when inputting this code, MRs were not required to record the reasons for judging that there was water consumption. As a result, when taking action to adjust bills in such cases and in response to consumers' queries, WSD was unable to adduce concrete evidence to prove that the meter had indeed been defective. This would give consumers the impression that WSD was arbitrary and high-handed.

15. We consider that WSD should review its meter testing policy, particularly for MR code NR (Zero warning but there should be water consumption).

Lack of Consideration for Consumers

16. We consider that WSD should adopt a more customer-oriented approach, especially in adjusting bills, bearing in mind that consumers would invariably be upset in such situations. Specifically, we suggest that WSD should consider issuing explanatory letters for all bill adjustments and presenting more clearly important messages such as those relating to meter replacement and bill adjustments.

Recommendations

17. We made a total of 12 recommendations to WSD, covering meter reading and testing, staff training and monitoring, use of the computer system, and communication with consumers. Our recommendations were accepted by WSD.

Annex 7

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recommen-dations
Agriculture, Fisheries & Conservation Department			
2010/2175	Failing to discharge its duty to capture stray cats, resulting in serious environmental hygiene nuisance in a certain locality	Substantiated	4
2011/0494	Shirking responsibility in handling a report on illegal felling of trees near some graveyards on a permitted burial ground, claiming that the matter was beyond its purview and should be followed up by other departments	Unsubstantiated	0
Buildings Department			
2010/4759	(1) Improper handling of a seepage problem in the complainant's flat (partially substantiated); and (2) Failing to follow up the complainant's request to remove an unauthorised roof structure (unsubstantiated)	Partially substantiated	3
2010/5818	(1) Delay in handling a water seepage complaint (substantiated); (2) Failing to inform the complainant of the result of its investigation conducted in a flat which the complainant had suspected to be the source of the seepage in her flat (substantiated); (3) Failing to respond to the complainant's telephone enquiries (partially substantiated); (4) Manipulating the findings of the inspection conducted in the complainant's flat (substantiated other than alleged); and (5) Failing to respond to the complainant's complaint letter (substantiated)	Substantiated	5
2011/0870	(1) Delay in handling a water seepage complaint (partially substantiated); and (2) Delay in responding to the complainant's enquiries about the progress of investigation into his water seepage complaint (partially substantiated)	Partially substantiated	2
2011/0913	(1) Improper decision to stop investigating certain seepage areas in the complainant's flat (unsubstantiated); and (2) Failing to properly handle the structural safety problem in the complainant's flat (unsubstantiated)	Unsubstantiated	3

Case No.	Complaint	Overall Conclusion	No. of Recommen-dations
2011/2382 2011/2456	Mishandling a complaint about seepage nuisance caused by defective water-proofing layer of a platform's floor slab upstairs	Partially substantiated	2
2011/2614A	Failing to issue in a timely way a removal order against an unauthorised building works item at a flat	Partially substantiated	0
2011/2737B	Failing to follow up a complaint about seepage of rain water through the external wall of a building	Unsubstantiated	1
2011/3001	(1) Lack of supervision on the performance of appointed consultants in carrying site inspection of unauthorised building works (unsubstantiated); and (2) Mishandling complaints against these consultants (unsubstantiated)	Unsubstantiated	0
2011/3155A	Shirking responsibility in clearing the platform and unauthorised building works of a stall	Substantiated	1
2011/4096B	Failing to follow up a complaint about seepage of rain water through the external wall of a building	Unsubstantiated	1
2011/4171A	(1) Failing to follow up a complaint about unauthorised building works at the roof of a village house (unsubstantiated); and (2) Failing to inform the complainant in writing of the outcome of the investigation (unsubstantiated)	Unsubstantiated	0
2011/4281A	Failing to take immediate enforcement action against a gate installed beneath a staircase in a village house	Unsubstantiated	0
Consumer Council			
2010/3421	(1) Referring a complaint to another organisation despite its statutory role to handle consumer complaints (unsubstantiated); and (2) Failing to properly follow up the complaint and being bureaucratic (unsubstantiated)	Unsubstantiated	2
2011/1339	Delay in handling a complaint about compensation for real estate development	Substantiated	3
Correctional Services Department			
2010/4583	Unreasonable refusal by a correctional institution of an inmate's application for a change of diet category	Unsubstantiated	0
2011/2957	Unreasonably prohibiting an inmate from making telephone calls to his family abroad	Unsubstantiated	1
Department of Health			
2010/4919	Allowing the Hospital Authority to conduct clinical trials of a medicine without a clinical trial certificate	Substantiated	1
Employees Retraining Board			
2011/1759	Mishandling a complaint against the poor staff attitude of an organisation under its purview, and unreasonably refusing to provide relevant information	Partially substantiated	1

Case No.	Complaint	Overall Conclusion	No. of Recommen-dations
Environmental Protection Department			
2011/1140B	Unreasonably issuing the Construction Noise Permit to the Water Supplies Department to carry out mid-night construction work, thereby affecting nearby residents	Unsubstantiated	0
2011/1723	Rejecting the complainant's application for the Quality Powered Mechanical Equipment labels in respect of some second-hand generators on the basis of ambiguous and unpublished assessment criteria	Partially substantiated	4
2011/3236B	Ineffective enforcement action against illegal land filling activities near the complainant's land	Unsubstantiated	0
Fire Services Department			
2011/4281B	Failing to take immediate action against a gate installed beneath a staircase in a village house	Unsubstantiated	0
Food and Environmental Hygiene Department			
2010/4760	Improper handling of a seepage problem in the complainant's flat	Partially substantiated	3
2010/5020	(1) Delay in handling a water seepage complaint (substantiated); and (2) Improper decision to stop investigating certain seepage areas in the complainant's flat (unsubstantiated)	Partially substantiated	3
2011/0657	(1) Failing to revoke the licence of a restaurant which illegally extended its business area (partially substantiated); and (2) Allowing the restaurant to set up an outside seating accommodation area despite its serious violation of restrictions (substantiated)	Partially substantiated	4
2011/0898	Failing to remove a roadside stall erected against a flank wall of the complainant's ground-level shop and asking the complainant to apply to the Court for a removal order himself	Unsubstantiated	2
2011/1357	Allowing the holder of an Undertaker's Licence to violate the licensing conditions at another shop, resulting in regulatory loopholes	Unsubstantiated	0
2011/1398	(1) Delay in handling a water seepage complaint (unsubstantiated); and (2) Delay in responding to the complainant's enquiries about the progress of investigation into his water seepage complaint (partially substantiated)	Partially substantiated	2
2011/2049	Unreasonably taking possession of the complainant's bicycle in a joint clearance operation	Unsubstantiated	0
2011/2284 2011/2363	Mishandling a complaint about seepage nuisance caused by defective water-proofing layer of a platform's floor slab upstairs	Unsubstantiated	2

Case No.	Complaint	Overall Conclusion	No. of Recommen-dations
2011/2694	Unreasonably requiring the complainant to make a request before providing him with a written statement of accusation	Unsubstantiated	0
2011/2737A	Failing to follow up a complaint about seepage of rain water through the external wall of a building	Unsubstantiated	1
2011/3097	Failing to properly follow up a complaint about illegal dumping of refuse in front of shops and on pavement at midnight	Partially substantiated	2
2011/3155B	Failing to control the unauthorised extension of business area by a stall	Substantiated	1
2011/3388	Unfair booking system of crematoria services	Unsubstantiated	0
2011/4017	(1) Delay in handling a case of dripping air-conditioner (substantiated); and (2) Failing to respond to the complainant's telephone messages in a timely manner (substantiated)	Substantiated	2
2011/4096A	Failing to follow up a complaint about seepage of rain water through the external wall of a building	Unsubstantiated	1
2011/5091	Failing to effectively control the chronic problem of pavement obstruction caused by a shop's illegal extension of business area	Partially substantiated	2
Government Secretariat – Chief Secretary for Administration's Office (Efficiency Unit)			
2010/1203	Failing to follow up the complainant's request to prune some roadside trees	Partially substantiated	1
2010/2027	Undue delay in handling a complaint about water leakage problem from below the podium next to a West Rail station	Partially substantiated	1
2011/1399	Delay in responding to the complainant's enquiries about the progress of investigation into his water seepage complaint	Partially substantiated	1
Government Secretariat – Development Bureau			
2011/1362	(1) Failing to plug statutory loopholes, such that the Planning Department had no power to take enforcement action against burial shops in breach of the planned land use in the urban area (unsubstantiated); and (2) Failing to include in the periodic data on private columbaria published by the Bureau a dozen illegal columbaria in a certain district already known to the Administration (unsubstantiated)	Unsubstantiated	0
2011/2580B	Mishandling an application for an extension of time to file a document with the Appeal Tribunal (Buildings)	Substantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommen-dations
Government Secretariat – Education Bureau			
2011/1700	(1) Failing to follow the constitution of the school management committee ("SMC") of a government secondary school in allowing the members of the SMC to vote on an issue, namely, whether or not the school should join the Voluntary Optimisation of Class Structure Scheme ("Scheme") (unsubstantiated); (2) Allowing the Chairman of the SMC to apply to join the Scheme on behalf of the school without authorisation from the SMC (unsubstantiated); and (3) Processing the school's application for joining the Scheme knowing that the application had not been endorsed by the SMC (unsubstantiated)	Substantiated other than alleged	0
2011/2590	Failing to properly implement the "Voluntary Optimisation of Class Structure Scheme"	Substantiated	0
Government Secretariat – Financial Services and the Treasury Bureau			
2011/1396	Rejecting the complainant's application for fee waiver in respect of a fire service certificate for a festive event organised by his church	Unsubstantiated	1
Government Secretariat – Home Affairs Bureau			
2011/1358	Refusing to invoke the Chinese Temple Ordinance to take enforcement action against illegal Taoist monasteries in a certain district which provided niches on their premises	Unsubstantiated	0
Highways Department			
2010/1202	Failing to follow up the complainant's request to prune some roadside trees	Unsubstantiated	0
2010/5147	Undue delay in handling a complaint about water leakage problem from below the podium next to a West Rail station	Substantiated	4
Home Affairs Department			
2011/0069	Failing to proactively and adequately consult the local District Council in advance regarding Government's plan to put a temporary Government plot on the List of Sites for Sale by Application to be auctioned for residential development	Unsubstantiated	0
2011/0495	Shirking responsibility in handling a report on illegal felling of trees near some graveyards on a permitted burial ground, claiming that the matter was beyond its purview and should be followed up by other departments	Unsubstantiated	0
2011/1359	Being perfunctory in conducting public consultation on an application for Undertaker's Licence by a shop in a certain district	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommen-dations
2011/2050	Unreasonably taking possession of the complainant's bicycle in a joint clearance operation	Unsubstantiated	1
2011/3111	(1) Refusing to view the content of a video record (unsubstantiated); (2) Failing to take action against illegal operations of guest houses (unsubstantiated); and (3) Failing to inform the complainant of the progress or result of investigation (unsubstantiated)	Unsubstantiated	2
Hong Kong Housing Society			
2010/5752 2010/5753	Failing to disclose in a timely manner the actual income-expenditure situation and the details of subsidy regarding the management fee of a housing estate under the Senior Citizen Residences Scheme	Substantiated	3
Hospital Authority			
2010/4920	Conducting clinical trials of a medicine without a clinical trial certificate	Unsubstantiated	0
2011/0021	Refusing the complainant's request to read his own medical records	Partially substantiated	1
2011/3946A	Shifting responsibility and ignoring the needs of the complainant's disabled daughter in refusing to arrange placement for her in an infirmary	Unsubstantiated	2
Housing Department			
2010/4711	Delay in providing offices for the Mutual Aid Committees of a public housing estate	Unsubstantiated	0
2011/1019	Failing to properly plan and provide sufficient motorcycle parking spaces in a certain district	Unsubstantiated	0
2011/1216	Making inappropriate allocations to the complainant, thereby causing delay in her accommodation in public rental housing	Substantiated other than alleged	2
2011/3514A	Failing to handle a seepage complaint in a proper manner	Partially substantiated	0
Immigration Department			
2010/5273	(1) Failing to follow established procedures when processing the entry of the complainant's two Indian relatives at the airport (substantiated); (2) Prohibiting the two detained visitors from contacting outside parties (partially substantiated); and (3) Failing to arrange an official interpreter to provide interpretation service for the two visitors (partially substantiated)	Partially substantiated	3
Land Registry			
2011/2614B	Failing to register a removal order in a timely manner	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommen-dations
Lands Department			
2010/2028	Undue delay in handling a complaint about water leakage problem from below the podium next to a West Rail station	Unsubstantiated	4
2010/2142	Failing to take action to prune some roadside trees, thus blocking the view of passengers waiting at an adjacent bus stop	Substantiated	1
2010/4260	Unreasonably refusing to process the complainant's application for lease modification	Unsubstantiated	0
2010/4613	Impropriety in approving a Small House project	Unsubstantiated	0
2010/4868	(1) Delay in handling the complainant's building plan submission; and (2) Failing to explain the cause of the delay	Substantiated	1
2010/5819	Failing to remove an unauthorised roof structure and repair the roof of a building on behalf of the Financial Secretary Incorporated	Partially substantiated	2
2011/0070	Failing to proactively and adequately consult the local District Council in advance regarding Government's plan to put a temporary Government plot on the List of Sites for Sale by Application to be auctioned for residential development	Unsubstantiated	0
2011/0255	(1) Allowing an organisation to permanently erect huge flower plaques mounted on bamboo scaffolding near the pier on an outlying island (unsubstantiated); and (2) Some of the flower plaques were for celebrating private events with no relation to public interests (unsubstantiated)	Unsubstantiated	0
2011/0496	Shirking responsibility in handling a report on illegal felling of trees near some graveyards on a permitted burial ground, claiming that the matter was beyond its purview and should be followed up by other departments	Unsubstantiated	0
2011/1020	Failing to properly plan and provide sufficient motorcycle parking spaces in a certain district	Unsubstantiated	0
2011/1623	Failing to properly regulate some private columbaria allegedly in breach of land lease clauses	Inconclusive	2
2011/1633	Delay in executing a provision in an approval letter from the department to a land developer regarding the construction of an indoor recreation centre	Unsubstantiated	0
2011/2051	Unreasonably taking possession of the complainant's bicycle in a joint clearance operation	Unsubstantiated	1

Case No.	Complaint	Overall Conclusion	No. of Recommen-dations
2011/2806	(1) Failing to take enforcement action against illegal occupation of Government land (partially substantiated); (2) Failing to inform the complainant of the progress of the investigation (partially substantiated); and (3) Delay in the process of investigation (unsubstantiated)	Partially substantiated	0
2011/3155C	Shirking responsibility in clearing the platform and other unauthorised building works of a stall	Substantiated	1
2011/3236A	(1) Failing to properly resolve the flooding problem of the complainant's land and rejecting his suggestion of building a new watercourse (unsubstantiated); and (2) Ineffective enforcement action against illegal land filling activities near the complainant's land (unsubstantiated)	Unsubstantiated	0
2011/3242A	(1) Failing to take action against unauthorised fencing off of several pieces of private land in a village (unsubstantiated); and (2) Failing to take enforcement action against land-filling activities and change of land use on several pieces of private land in a village (unsubstantiated)	Unsubstantiated	0
2011/3364	Impropriety in approving an application for a Small House development, such that the Small House restricted the access road to the complainant's residence	Unsubstantiated	0
2011/3482B	(1) Failing to take action to prohibit unregistered and uninsured builders from erecting flower plaques mounted on bamboo scaffolding near the pier on an outlying island (unsubstantiated); and (2) Unreasonably allowing display of flower plagues for celebrating private events with no relation to public interests (unsubstantiated)	Substantiated other than alleged	5
2011/3527B and others	(1) Concealing a sport club's proposal to construct an office building during the public consultation on the club's lease renewal (unsubstantiated); (2) Refusing to carry out public consultation on the construction proposal (unsubstantiated); (3) Failing to scrutinise comprehensively the construction proposal in accordance with the lease conditions (unsubstantiated); (4) Wrongly applying the existing lease conditions to consider the proposal to construct a building that would be completed only after the lease renewal (unsubstantiated); and (5) Failing to effectively control the unauthorised change of land use (unsubstantiated)	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommen-dations
2011/3721	Inaction against some shop operators' occupation of the private portion of a pavement	Unsubstantiated	2
2011/3749	Delay in following up a complaint about odour and noise nuisance from an illegal garage in the complainant's village	Substantiated	2
2011/3957	Failing to take proactive action against an illegal squatter hut on Government land behind a village house, resulting in proliferation of the illegal activity in the village	Unsubstantiated	0
2011/4171B	(1) Failing to follow up a complaint about unauthorised building works at the roof of a village house (unsubstantiated); and (2) Failing to inform the complainant in writing the outcome of the investigation (unsubstantiated)	Unsubstantiated	0
Leisure and Cultural Services Department			
2011/0315	Delay in executing a provision in an approval letter from the Lands Department to a land developer regarding the construction of an indoor recreation centre	Unsubstantiated	0
2011/1181	Failing to respond to the complainant's complaint	Substantiated	2
2011/2557	Mismanagement of the grass pitch in a recreation ground	Unsubstantiated	1
Official Receiver's Office			
2011/1016	Unreasonably requesting an informant to conduct a bankruptcy search and to verify the information he provided to ascertain a suspected person's identity	Substantiated	2
2011/2730 and others	Being unfair to other bankrupts in deciding not to claim the money obtained from the "Scheme $6,000" from those bankrupts whose property was held by the Office as trustee	Substantiated	1
Planning Department			
2011/1360 2011/1361	Failing to raise objection when consulted by the Food and Environmental Hygiene Department regarding a shop's application for Undertaker's Licence, despite its knowledge that the land occupied by the shop was not permitted for burial service purposes	Unsubstantiated	1
2011/3236C	Ineffective enforcement action against illegal land filling activities near the complainant's land	Unsubstantiated	0
2011/3242B	Failing to take enforcement action against land-filling activities and change of land use on several pieces of private land in a village	Unsubstantiated	0
Post Office			
2011/2515	Impropriety in using public transport for mail transfer	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommen-dations
Securities and Futures Commission			
2011/1241	Delay in processing and failing to approve an application for personal licences	Partially substantiated	1
Social Welfare Department			
2011/2039	(1) Failing to obtain the complainant's prior consent before taking the complainant's two daughters to hospital for examination of suspected sexual abuse (unsubstantiated); and (2) Failing to inform the complainant after taking the two girls from school to hospital and instructing them not to answer the complainant's telephone calls (partially substantiated)	Partially substantiated	0
2011/2856	Failing to consult the complainant's mother before refusing to disclose her address to the complainant	Partially substantiated	1
2011/3663	(1) Unreasonably using the date that the complainant submitted his Higher Old Age Allowance application as the commencement date of his allowance (unsubstantiated); and (2) Giving little publicity to the arrangement that early submission of application for the allowance would be accepted (substantiated)	Partially substantiated	0
2011/3946B	Shifting responsibility and ignoring the needs of the complainant's disabled daughter in refusing to arrange placement for her in a residential care home	Substantiated	3
Transport Department			
2010/5125	Failing to proactively follow up a complaint about defective speed display device installed on a minibus	Substantiated	3
2010/5148	Undue delay in handling a complaint about water leakage problem from below the podium next to a West Rail station	Substantiated	1
2010/5511	Failing to properly plan and provide sufficient motorcycle parking spaces in a certain district	Substantiated other than alleged	1
Water Supplies Department			
2011/0098	(1) Failing to initiate follow-up action when an anomalous water meter reading was observed (substantiated); and (2) Acting arbitrarily in estimating the complainant's water consumption (substantiated)	Substantiated	3
2011/1140A	Carrying out mid-night construction work without prior consultation with and notice to affected nearby residents	Unsubstantiated	0



Annex 8

Summaries of Selected Cases Concluded by Full Investigation

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

Agriculture, Fisheries and Conservation Department ("AFCD")

Case No. OMB 2010/2175 –
Stray cat nuisance
Allegation: failing to discharge its duty to capture stray cats resulting in serious environmental hygiene nuisance in a certain locality – substantiated



Details of Complaint

In mid-May 2010, the complainant called the 1823 Call Centre ("Call Centre") to lodge a complaint with AFCD about stray cats roaming the locality where she lived ("the Locality") and causing environmental hygiene nuisance. As the Locality was a zone under the Cat Colony Care Programme ("CCCP") run by an animal welfare organisation ("the Organisation"), AFCD referred the case to the Organisation for follow-up action. AFCD also asserted that its staff had tried to capture stray cats outside the zone.

2. In late May, the complainant called the Call Centre again and requested that AFCD capture the stray cats and provide her with details regarding the time of captures. However, AFCD did not give her a clear reply and only advised her to contact the Organisation directly. She then voiced her dissatisfaction via the Call Centre repeatedly in the following two months, alleging that AFCD had failed to discharge its duties to capture stray cats, shifting the responsibility to the Organisation and passing the work of clearing up cat faeces to the Food and Environmental Hygiene Department ("FEHD") and the Leisure and Cultural Services Department ("LCSD").

CCCP

3. CCCP was launched by the Organisation in various localities in Hong Kong in 2000. Its objective was to improve the life and health of stray cats and eventually stabilise and reduce their population by way of "Trap, Neuter and Return (to where they were captured)" ("TNR"). Volunteers, known as CCCP carers, are recruited under the Programme. Apart from feeding and taking care of stray cats in their zones of responsibility, CCCP carers capture and take them to the Organisation for de-sexing. The Organisation claimed that as at January 2011, more than 80 stray cats in the Locality had been de-sexed and there were still about 30 living in the area.

Response from AFCD

AFCD's Role

4. AFCD indicated that current legislation has no rules regarding the keeping, feeding, capturing and neutering of cats. Therefore, it can be said that CCCP would not need the approval, permission or monitoring of AFCD. However, the department supported the Programme in principle and played an assisting role. For example, it would return to the Organisation de-sexed and microchipped cats (as identified by a "tipped" ear) that were captured.

5. AFCD and the Organisation had drawn up the "Basic Criteria and Requirements" for CCCP. The document stated that complaints received by AFCD about stray cats within Programme zones would be referred to the Organisation for action. AFCD normally would not follow up on the complaints or enter the zones to capture cats there. The Organisation also had guidelines requiring carers to handle and solve the environmental hygiene problems arising from CCCP within their zones.

6. The Organisation received Government subsidy every year through AFCD for the promotion of animal welfare. Over the previous three financial years, $200,000 of the subsidy was spent on CCCP each year. AFCD noted that it had asked the Organisation to submit information and data for assessing the effectiveness of CCCP, but the data it received were not detailed enough. Meanwhile, AFCD never reviewed the "Basic Criteria and Requirements" since 2005.

Handling of the Complaint

7. AFCD explained that it had referred the complaint of stray cats to the Organisation and the related environmental hygiene problem to FEHD. AFCD itself had deployed staff to conduct site inspections at the Locality at different times of the day. Some stray cats that had been "ear-tipped" were spotted.

8. Nevertheless, AFCD considered that the Organisation had failed to handle the complaint properly. Cats not yet "ear-tipped" were still found in certain parts of the Locality. AFCD, therefore, notified the Organisation at the end of July 2010 that it no longer endorsed the CCCP in those areas. FEHD was also asked to step up its inspections. As at February 2011, AFCD staff had conducted 30 site inspections and captured 17 stray cats in those areas. It continued to request the Organisation to monitor properly the work of its carers, while advising the public against feeding stray cats to avoid causing environmental hygiene nuisance.

Other Relevant Information

9. The Organisation stated that AFCD agreed and indicated its support to CCCP in 2002. Upon receipt of CCCP-related complaints, the Organisation would conduct investigations and its staff would carry out site inspections.

10. The CCCP in the Locality encountered many difficulties. First of all, a number of shops in the neighbourhood kept cats, which were allowed to roam the streets and so easily mistaken for stray cats. Secondly, some people other than CCCP carers also fed stray cats in the Locality. Besides, CCCP carers could not capture cats in those areas under LCSD jurisdiction (such as parks). This rendered captures more difficult. Nonetheless, the Organisation estimated that as at April 2011, the number of stray cats in the Locality had decreased by more than 40%.

11. FEHD had, in response to complaints, conducted several site inspections in the Locality. During the inspection conducted in May 2011, fixed penalty tickets were issued to people found feeding stray cats and fouling public places. The department then stepped up street cleansing there. LCSD also claimed that its staff had inspected the playgrounds in the Locality. They did not see anyone feeding stray cats but leftover cat food, which was immediately cleaned up. Neither FEHD nor LCSD participated in CCCP and they did not consider that AFCD had shifted the responsibility of clearing up cat faeces to them.

Our Observations and Comments

12. There were cats kept by shops as well as stray cats in the Locality. Meanwhile, cat food left behind by non-carers and cat faeces led to environmental hygiene problems. Consequently, the nuisance caused by cats could not be attributed solely to CCCP. As it was difficult for ordinary people to distinguish domestic cats from stray cats and CCCP carers from others, the complainant's dissatisfaction with AFCD for allowing the Organisation to run CCCP in the Locality was understandable.

13. The "Basic Criteria and Requirements" stated clearly that AFCD "cooperates" with the Organisation to promote the Programme. An official document issued by the department also stated that it had "all along supported the CCCP carried out (in the Locality) by the Organisation". Besides, Government subsidised the Programme through AFCD every year. AFCD was, therefore, shirking its responsibility when it claimed that it only played an "assisting" role in CCCP.

14. AFCD had not reviewed or assessed the effectiveness of CCCP during the past five to six years and had been indifferent to its progress and the problems generated. It had never pointed out specifically to the Organisation the kind of information it was required to submit for review and assessment of the Programme, nor had it monitored how the Organisation used public funds in running the Programme. This was dereliction of duty from an administrative point of view.

15. As regards complaint handling, the complaint was lodged with AFCD. The department, therefore, had the duty to reply to the complainant direct. However, it only referred the case to the Organisation and asked the complainant to contact the Organisation on her own. It stayed out of the matter and did not bother to find out whether the problem had been properly dealt with. Such indifferent attitude was indeed improper.

16. Overall, the failure of CCCP in the Locality was attributable to inadequate monitoring by AFCD. The issues involved in this complaint were complicated and the departments involved included also FEHD and LCSD which, however, had not participated in the Programme. In our view, to resolve the problem completely, AFCD must properly monitor CCCP, work closely with the other relevant departments and the Organisation, and step up publicity and public education.

17. Separately, AFCD had, at the earlier stage of our inquiry in February 2011, indicated its intention to strengthen cooperation with the Organisation regarding CCCP and improve the monitoring mechanism. However, when asked to comment on our draft investigation report in July, it said that since CCCP was no longer included in the Organisation's application for annual subvention, AFCD would stop subsidising the Programme. Consequently, the department no longer had the authority to ask the Organisation to submit any details of CCCP and so a review of the Programme and its effectiveness should not be required. We found this sudden change in AFCD's attitude surprising. In fact, in the Policy Address published in October 2011, the Administration stated its policy towards animal welfare as follows: help (animal welfare organisations) implement TNR trial programmes. AFCD's sudden stoppage of subsidising CCCP, a TNR programme, appeared to be running counter to Government policy. Furthermore, AFCD, pleading its heavy workload such that communication with the Organisation was largely by telephone, was unable to provide us with any documents or records in support of its decision to stop the subsidy. We found this a reflection of the department's very poor office administration.

Conclusion and Recommendations

18. AFCD failed to discharge its statutory duties to manage stray animals to abate environmental hygiene nuisance to the public. Nor did it act to ensure that CCCP could fulfil its objective of stabilising and reducing the population of stray cats.

19. The Ombudsman, therefore, considered this complaint substantiated.

20. The Ombudsman recommended that AFCD:

(1) conduct a comprehensive review on the effectiveness and future direction of CCCP as soon as possible;

(2) review the handling procedures of CCCP-related complaints and formulate improvement measures;

(3) strengthen communication and cooperation with the Organisation regarding CCCP and clarify the kind of data and information required for assessing the effectiveness of the Programme; and

(4) step up publicity and public education targeting pet owners in the Locality.

A case of failure to discharge duties conscientiously and to act in line with Government policy

Buildings Department ("BD")

Case No. OMB 2011/2614A –
Removal order against unauthorised building works
Allegation: failing to issue in a timely way a removal order against an unauthorised building works ("UBW") item at a flat, as a result of which the complainants purchased the flat without knowledge of the UBW item – partially substantiated



Details of Complaint

The complainants, a married couple, purchased a flat on 18 November 2010. In April 2011, BD issued them a removal order against a UBW item at the flat. The complainants then realised that a removal order had in fact been issued to the former owner of the flat in April 2010, but had not been complied with. BD had since neither taken any follow-up action nor registered that removal order with the Land Registry ("LR"), as a result of which the complainants had purchased the flat without knowledge of the UBW.

BD's Response

2. On 12 April 2010, as the UBW item in question was found to be of imminent danger, BD issued an advisory letter to the then owner of the flat, urging him to reinstate those parts of the building affected. As the reinstatement works were expected to take time, BD staff did not conduct a site inspection until 20 August. They then found that the owner of the flat had failed to comply with BD's advisory letter. On 5 November, BD obtained from LR information about the owner and issued him a removal order. A copy of the removal order was sent to LR on 11 November for registration.

3. On 18 November, the complainants became the new owners of the flat. As the aforementioned removal order had been issued to the former owner, it could not then be registered by LR. BD, therefore, issued a superseding order in April 2011, requiring the complainants to demolish the UBW item. A copy of the superseding order was delivered to LR in mid-May for registration.

Our Comments

4. BD did not conduct a site inspection until four months after its issuance of an advisory letter on the UBW item to the then owner of the flat, and did not issue a removal order until two months after the inspection. That was indeed sluggish of BD, indicative of an indifferent attitude towards public safety.

5. Nevertheless, it is not exactly BD's responsibility to protect the interests of prospective property buyers, who should seek professional advice and enquire of BD for the necessary details (including records of any UBW) of the property they intend to purchase.

6. The Ombudsman considered this complaint partially substantiated.

Recommendation

7. The Ombudsman urged BD to remind its staff that to ensure public safety, enforcement action against dangerous UBW items must be taken expeditiously.

A case of low efficiency

Consumer Council ("CC")

Case No. OMB 2010/3421 – Complaint handling
Allegations: (1) referring a complaint to another organisation despite its statutory role to handle consumer complaints – unsubstantiated; and (2) failing to properly follow up the complaint and being bureaucratic – unsubstantiated



Details of Complaint

The complainant booked a package tour and paid a deposit. Later, staff of the travel agent informed him that the tour was cancelled due to low enrolment and recommended a more expensive package tour with the same departure day. He considered it an unfair practice of the travel agent and complained to CC and the Travel Industry Council of Hong Kong ("TIC").

2. CC replied to the complainant that as his complaint was outside the purview of CC, it would only refer the case to TIC for handling. Subsequently, the complainant received from CC a copy of TIC's reply which he considered as merely repeating the travel agent's words. He was dissatisfied that CC had referred his complaint to another organisation and failed to follow it up properly.

Travellers' Complaints and Referral Mechanism

3. CC considered TIC to be able to handle complaints about travel agents more effectively and monitor the industry more closely because anyone who wants to operate as a travel agent in Hong Kong must first register as a member of TIC before applying for a Licence.

4. Following several incidents of Mainland visitors being forced to make purchases at designated shops in Hong Kong in 2007, CC and TIC set up a working group with the Tourism Board, the Customs and Excise Department and the Police. The working group aimed to review relevant legislation to strengthen the legal grounds for protection of consumer rights as well as to establish a reporting mechanism of travellers' complaints. Since the new mechanism came into force, travellers' complaints are referred to the appropriate department or organisation according to their nature. CC and TIC are responsible for receiving and handling complaints from inbound travellers and resolving disputes between travel agents and related businesses and the consumers.

5. According to the agreement between CC and TIC in 2007, if complaints lodged by inbound or outbound travellers are within the purview of TIC, CC will suggest to the complainants that they should approach TIC if they have not yet done so. In case the travellers request CC to refer their cases to TIC for follow-up actions, CC will first obtain their consent and then make the referral. The findings and proposed resolution will then be submitted to the complainants via CC.

Response from CC

Allegation (1)

6. According to CC, its staff had followed the aforesaid referral mechanism and the internal guidelines set out in "Complaints outside the purview of CC" in handling this complaint. Besides, the case was referred to TIC with the complainant's consent. Therefore, CC considered referring the complaint to TIC not only appropriate but also more efficient and direct. After referring the case, CC continued to check on the progress of the complaint handling. Unfortunately, the outcome was not what the complainant had expected.

7. The mode and referral arrangements adopted by CC and TIC for handling travellers' complaints have been effective in achieving the objective to protect consumer rights. CC has also reminded travellers on its website and in the recorded messages on its hotline that they could lodge a complaint with TIC if they received any unfair treatment by their travel agents.

Allegation (2)

8. After receiving the complaint, CC staff had stayed in touch with TIC to resolve the issue and tried their best to assist the complainant. CC, therefore, had not failed to properly follow up the complaint. Nor had it been bureaucratic.

9. The complainant suggested that CC should convey its views to problematic travel agents or publish articles to expose how they exploited consumers in its monthly publication Choice as a deterrent. CC explained that it had from time to time been reminding consumers what they should pay attention to when making travel plans and had already published articles on this subject in Choice.

Our Observations and Comments

10. Under the referral mechanism established between CC and TIC, the latter is responsible for handling complaints against licensed local travel agents. We, therefore, found no impropriety in CC's referral of this complaint to TIC for handling. Besides, TIC could penalise its member agents for confirmed violation of rules. In terms of effective utilisation of resources, it was not unreasonable for CC to refer the complaint to TIC.

11. In fact, upon receiving the complaint, CC immediately referred the case to TIC for follow up. There was no maladministration on its part. On the other hand, the travel agent also tried to resolve the dispute by offering a concession to the complainant, only that the complainant did not accept it. We considered CC to have performed its statutory function in handling the complaint. As regards TIC, it was not within our jurisdiction and so we would not comment on how it handled the complaint.

Conclusion and Recommendations

12. Overall, The Ombudsman considered the two allegations unsubstantiated.

13. Nevertheless, there was room for improvement in CC's dissemination of information on the handling of travellers' complaints. We were of the view that CC should consider providing a clearer explanation on the division of work between CC and TIC and their purview regarding travellers' complaints so that travellers could understand their respective roles in protecting consumer rights.

14. CC agreed to implement The Ombudsman's recommendations to:

(1) review and consider revising the guidelines set out in "Complaints outside the purview of CC"; and

(2) expedite the enhancement of its website.

Consumer Council ("CC")

Case No. OMB 2011/1339 –
Delay in complaint handling
Allegation: delay in handling a complaint about compensation for real estate development – substantiated



Details of Complaint

The complainant previously lived in a building to be redeveloped by a real estate developer. She was dissatisfied with the compensation package offered and considered that the developer had not properly replied to her enquiries. In early 2010, she lodged a complaint with CC. Despite her subsequent provision of supplementary information and emails urging CC to take action, there had been no progress and CC had not told her what follow-up action would be taken on her case. She alleged that CC had delayed handling her complaint.

Response from CC

2. The complainant sent emails to CC to enquire about the unsatisfactory compensation package offered by the developer. She also asked about application for the Consumer Legal Action Fund ("CLA Fund"). Her case was classified by CC as an "enquiry". As the complainant had not been able to provide the necessary information and documents requested by CC, her case had never been treated as a "complaint" and no mediation arrangements had been made.

3. The case officer concerned had taken long leave from June 2010 to April 2011 and later resigned. While he was on leave, CC had assigned its Screening Unit to keep watch on any correspondence and emails that might be sent by the complainant but none had been received. CC thought that the case officer had already replied to the complainant before taking leave and thus completed the handling of her "enquiry".

4. CC explained that the complainant did send two emails while the case officer was on leave. However, it was not aware that the case officer had mistakenly used his personal staff email address instead of the council's email address to communicate with the complainant. As a result, the emails had gone unnoticed. The officers who subsequently took over the case had also failed to check the status of the case before closing it. According to CC, it would check the personal staff mailbox of ex-serving officers or those away from their positions for a long period so that work-related messages would not be missed or left unattended causing undue delay. The officer who handled the complainant's case had extended his vacation leave several times and his supervisor was not sure how many leave days he would need to take. To protect the officer's privacy, CC had not activated the mechanism to check his mailbox.

5. CC admitted that the case had not been handled satisfactorily. It had reminded supervisors to check staff members' personal staff mailboxes for work-related messages from the effective dates of their departures so that outstanding cases could be re-assigned to other officers. Staff members taking any leave for more than five days should also ask their colleagues to help check whether there are work-related messages in their mailboxes and attend to urgent cases where necessary. In September 2011, CC issued a circular to staff members reminding them to advise enquirers to send emails to the Council's official email address.

6. CC added that the complainant had also submitted an application for CLA Fund in July 2010 and its Legal Affairs Division processing the application had been handling the complainant's relevant enquiries. On the whole, CC considered that the complainant's case had been properly attended to and followed up.

Our Observations and Comments

7. CC could not confirm whether the complainant's case was within its ambit after working on the case for several months (from early 2010 to June 2010). It also failed to give the complainant a specific reply. Although there might not be actual delay during this period in replying to the complainant, the situation was far from satisfactory. In addition, the two emails sent by the complainant while the case officer was on leave were completely ignored.

8. In fact, had the case officer's personal staff mailbox been checked properly, CC would have known that the complainant's case did not fall under its definition of "consumer". It should then be able to reply to the complainant immediately, advising her to seek independent legal advice and then close this "enquiry" case. However, CC had not taken the initiative to check the officer's mailbox on the grounds that it could not confirm for how long the officer was taking his leave and that his privacy had to be protected. His supervisor apparently lacked vigilance. Moreover, CC failed to monitor or give instructions to staff members regarding leave or exit arrangements as well as the proper use of email addresses.

9. We could not accept that CC attributed the delay in handling the "enquiry" entirely to the complainant's failure to provide the necessary information. In fact, the complainant's provision of specific information, if any, could only have a bearing on when CC would turn her "enquiry" into a "complaint" or to decide to close the case. It had no bearing on whether CC had handled the complainant's "enquiry" in a proper and timely manner.

10. While CC claimed that it had guidelines and performance pledges for handling "enquiries" and that it had completed handling of the complainant's enquiry, it admitted that this "enquiry" case was one left behind by the case officer concerned pending follow-up action. This showed that CC had still not come to a conclusion as to whether the case was closed.

11. We considered there to be a number of slips on the part of CC in handling the complainant's case and we saw also systemic problems. For example, the complainant's two emails had gone unnoticed because the work of the departing case officer had not been followed up. Obviously, it was a systemic management problem but CC attributed it to the errors of individual staff members and inadequate information provided by the complainant. This reflected CC's reluctance to acknowledge the problem and accept its responsibility.

Conclusion and Recommendations

12. Overall, The Ombudsman considered the complaint substantiated.

13. The Ombudsman recommended that CC:

(1) draw up guidelines on work arrangements during long periods of absence of staff members, improve staff training and enhance the vigilance of supervisory officers;

(2) formulate guidelines on the use of emails and circulate them regularly; and

(3) consider drawing up monitoring measures and performance pledges for the handling of "enquiries".

14. CC admitted its inadequacies and accepted our recommendations for improvement.

Correctional Services Department ("CSD")

Case No. OMB 2011/2957 –
Inmates' telephone calls
Allegation: unreasonably prohibiting an inmate from making telephone calls to his family abroad – unsubstantiated



Details of Complaint

The complainant, an expatriate inmate, alleged that the management of the institution had unreasonably prohibited him from making telephone calls to his family in Europe. He was required to produce a letter from his wife for the management's consideration or to make his request via his Consulate.

Response from CSD

Convention and Rules

2. Neither the "Standard Minimum Rules for the Treatment of Prisoners" ("Minimum Rules") adopted by the United Nations nor the Prison Rules of CSD contain any provision governing inmates' requests to make telephone calls. CSD Standing Orders state that such requests are to be considered on their own merits, with reference to whether the inmate has a "genuine need for timely communication with his friends and relatives".

3. CSD stressed that expatriate inmates' geographical distance from their families is only one of the various factors for consideration. The department cited two Court of Appeal cases to support its stance that expatriate inmates should not be given the "preferential treatment" of being allowed more frequent telephone communication with their family members and friends as compared with local inmates.

The Event

4. CSD records show that between late February and early June 2011, the complainant had been allowed seven times to make telephone calls to his wife (four calls), his lawyer and the Consulate. When he made yet another request in mid-July, the officer noted that he had received more than 30 letters and 10 social visits since his admission in January. As he could not provide additional information to justify his latest request, the officer declined it.

5. The officer denied having asked the complainant to produce letters from his wife or to make his request via his Consulate. He only advised him to provide supporting documents such as incoming letters to facilitate the management's consideration of his request.

Our Comments and Conclusion

6. The management had indeed exercised discretion in allowing the complainant to make telephone calls between February and June 2011. Furthermore, his request in July was not rejected outright. He was asked to provide additional information as justification when the officer apparently had doubts whether that was a bona fide request. The officer's action was in accordance with CSD Standing Orders (paragraph 2).

7. In this light, The Ombudsman considered this complaint unsubstantiated.

Other Observations

8. Nevertheless, it is widely recognised that allowing inmates regular contact with their families helps prevent alienation and assists rehabilitation. Most expatriate inmates are in fact in a disadvantaged position compared with local inmates in that their chance of having regular visits by family members is much lower because of geographical distance. Consequently, they have to rely more on telephone as a means of contact with their families.

9. The two court cases cited by CSD only illustrate that expatriate inmates should not be given preferential treatment regarding the sentence of imprisonment. It should not be confused with the issue of equal opportunity for a disadvantaged group of inmates to have contact with their families and friends.

10. CSD should aspire to higher standards instead of just meeting the Minimum Rules (paragraph 2) drawn up back in 1955. Besides, it is practically difficult for expatriate inmates to provide supporting documents such as letters from family members, especially in case of emergency, not to mention that the authenticity of such documents is difficult to verify and their content not always comprehensible if written in a foreign language. Therefore, there is a high degree of arbitrariness in the current system of relying on individual officers' discretion in handling inmates' requests to make telephone calls.

Recommendation

11. Accordingly, The Ombudsman recommended that CSD review its system of handling inmates' requests for telephone communication with their family members and friends.

A case calling for systemic enhancement

Development Bureau ("DEVB")

Case No. OMB 2011/2580B –
Handling of appeal
Allegation: mishandling the complainants' application for an extension of time to file particulars of objection in an appeal case – substantiated



Details of Complaint

On 19 July 2010, the Building Authority ("BA") issued a removal order requiring the complainants to demolish an unauthorised building works item. On 22 July, the complainants served a notice of appeal on the Secretary to the Appeal Tribunal (Buildings) ("the Secretary"), in which they also applied for an extension of two months ("the Application") to file a Statement of Particulars ("SOP"). On 28 July, the Secretary replied in a letter that "I shall inform you the Tribunal Chairman's directions once available". Since then, the complainants had not heard from the Secretary.

2. In March 2011, the Tribunal dismissed the appeal on account of the complainants' failure to furnish the SOP. The complainants considered that the Secretary should not have asked them to wait for the Tribunal Chairman's directions on the Application.

Appeal Procedures

3. The Tribunal is an independent body formed, as and when necessary, to hear and determine appeals against BA's decisions. Appellants shall serve a notice of appeal on the Secretary, who is a public officer appointed by the Secretary for Development, and are required to submit an SOP within 28 days of the notice of appeal. The Tribunal may grant an extension of the time upon application.

DEVB's Explanation

4. According to DEVB, the Tribunal for hearing the complainants' appeal was not formed until February 2011 and the Secretary could not have submitted the Application to the Tribunal earlier. Since the Secretary was duty-bound to follow the Tribunal's instructions, if and only if there were any, he was not in a position to give the complainants any response in the interim.

5. The Secretary's reply of 28 July 2010 to the complainants contained the wording "I shall inform you the Tribunal Chairman's directions once available", which was standard for similar applications up to late 2010. DEVB admitted that there was room for improvement and agreed that the Secretary should:

(1) cease using such wording and develop new templates to avoid misunderstanding;

(2) work towards quicker formation of the Tribunal when necessary to deal with interlocutory applications; and

(3) prepare a leaflet for public understanding of the procedural and statutory requirements for lodging an appeal.

Our Comments

6. We found that the wording in the Secretary's reply of 28 July 2010 had resulted in the complainants'

reasonable expectation that they would be informed of the Tribunal's directions on the Application. As there was in fact no Tribunal to give any such directions before the expiry of the statutory time limit (28 days of the notice of appeal) for submission of an SOP, the Secretary should have informed the complainants of the situation before such expiry, so that they might decide what to do meanwhile. We did not consider that to do so, the Secretary would need any instruction from the Tribunal, which did not even exist then.

7. The Ombudsman, therefore, found the complaint substantiated.

8. During our inquiry, BA issued a superseding order to the complainants, replacing the removal order of July 2010. Consequently, the complainants could lodge an appeal again.

A case of inappropriate wording and inconsiderateness

Efficiency Unit ("EU"), Lands Department ("Lands D"), Highways Department ("Hy D") and Transport Department ("TD")

Case No. OMB 2010/2027-2028, 2010/5147-5148 –
Water leakage
Main allegations:
EU – undue delay in handling a complaint about water leakage problem from below the podium next to a West Rail station – partially substantiated
Lands D – same – unsubstantiated
Hy D and TD – same – substantiated



Details of Complaint

The complainant lodged several complaints with the 1823 Call Centre ("Call Centre") under EU since late January 2010 about water leaking from a pipe near a West Rail station (the "Station"), making the ground slippery for passers-by. As the leakage worsened, he complained to this Office in early June against EU and Lands D for undue delay in resolving the problem. Hy D and TD were later found to be involved as well and, therefore, included in our investigation.

Background

2. The Kowloon Canton Railway Corporation ("KCRC") was the project contractor of the Station. Maintenance responsibilities for the essential public infrastructure works ("EPIWs") around the station area were shared between KCRC (the Mass Transit Railway Corporation Limited ("MTRCL") after 2007) and relevant Government departments. This complaint was about water leaking from the podium at the public transport interchange ("PTI"), an EPIW, next to the Station.

Course of Events

3. The Call Centre received the complaint on 23 January 2010 and referred it to TD, which was supposedly the first contact point for complaints concerning MTRCL. When informed by TD that the location of leakage was not within MTRCL jurisdiction, the Call Centre then referred the case to Lands D on 12 February.

4. Lands D conducted a site inspection and a land status records search and found a letter dated 22 March 2004 ("the March letter") from KCRC to Hy D, TD and Lands D, setting out the arrangements regarding the management and maintenance of the PTI. It stated that KCRC (now MTRCL) and Hy D had shared maintenance responsibilities for the PTI. However, Hy D sent an internal memo to Lands D in early April 2010, indicating that it had no records of having taken over such responsibilities. To facilitate prompt action, Lands D wrote to the recipient departments of the March letter on 21 April to formally record the handover of maintenance responsibilities for the facilities. It further wrote to Hy D on 22 April, pointing out its maintenance responsibility. Nevertheless, Hy D asked Lands D to rectify the water leakage problem first and Lands D rejected, quoting its lack of maintenance expertise.

5. On 30 April 2010, Lands D, Hy D and MTRCL conducted a joint site inspection and agreed on the likely source of water leakage. On 10 May, Hy D found another letter dated 4 October 2004 ("the October letter") from KCRC to Hy D and TD. The letter confirmed that handover of maintenance responsibilities for the PTIs had been completed, but Lands D was not a recipient of that letter. On 14 May, Hy D wrote to MTRCL requesting it to conduct desilting works by 20 May 2010.

6. On 19 June 2010, the Call Centre informed the complainant that MTRCL had completed the repair works, as advised by Lands D the day before.

7. However, the complainant called the Call Centre again on 24 June, alleging that the pipe was still leaking. The Call Centre referred this repeated complaint first to TD, then to Lands D. Nonetheless, while Lands D later told the Call Centre that MTRCL was investigating the case, TD replied that MTRCL found no water dripping within the area under its responsibility. Such conflicting information prompted the Call Centre to escalate the case to the departmental coordinators of TD, Lands D and Hy D at the end of August, requesting them to come to a solution and report progress by 3 September.

8. In early September 2010, the complainant said the situation had improved but there was still water dripping during heavy rain. MTRCL agreed to follow up. The case was finally resolved in early October.

Comments from Departments

EU

9. EU stated that the Call Centre had done its best to ensure speedy handling of the complaint. Despite an oversight by its agent in June 2010 in referring the case to TD again, its referral of the case to the other relevant parties was prompt and in accordance with established procedures. Besides, it issued several reminders and brought the case to the attention of the coordinator of Lands D five times between March and August 2010. It also communicated with the complainant nine times to keep him abreast of case progress.

10. As soon as it noticed the conflicting information from TD and Lands D (paragraph 7), the Call Centre immediately escalated the case to the departmental coordinator level. This helped to bring about resolution of the complaint.

Lands D

11. Lands D indicated that although it took over the Station and its EPIWs on behalf of Government in November 2003, it had no expertise or maintenance responsibilities over them. KCRC, in consultation with Hy D and other parties concerned, should work out the apportionment and handover of these responsibilities and inform Lands D of such.

12. The department also took upon itself to coordinate and record the handover of the PTI in April 2010. Such coordination by Lands D enabled the relevant parties such as Hy D and MTRCL to take early action to resolve the case.

Hy D

13. Hy D's electronic map showed that maintenance responsibilities for the PTI structures should rest with MTRCL and it informed the Call Centre of this in January 2010. It saw no need to search for handover records as Lands D's April letter had confirmed the handover of maintenance responsibilities to parties concerned. It subsequently provided information on the location of the leakage and reminded MTRCL of its maintenance responsibility. Actually, throughout the whole period, Hy D had assisted in convincing MTRCL to take up the responsibility and urging it to conduct repairs quickly.

14. It deemed that Lands D should be responsible for ensuring MTRCL performs its maintenance functions, as it has a duty to ensure facilities on Government land are properly managed and maintained by relevant parties.

TD

15. TD twice relayed MTRCL's response to the Call Centre in January and June 2010 that the leakage did not fall within the Corporation's jurisdiction. When it learned that Lands D and Hy D were liaising with MTRCL for repair works in early August, it helped chasing for updates.

16. TD was on the circulation list of the March and October letters only because it was responsible for the management of some other facilities listed in the maintenance schedule. It is not a maintenance agent and has no maintenance responsibility over the PTI.

Our Comments and Conclusion

General Observations

17. As the leading department handling this case, Lands D did not have all the key documents that could pin down the responsible party, while the departments that held such documents failed to make reference to them and EU did not bring the case to the attention of all parties involved. These factors, plus the tricky nature of leakage problems, led to a delay of eight months in resolving the matter.

18. The case also exposed the possible problems arising from shared maintenance responsibilities between Government and an outside party. The Call Centre and TD agreed that complaints concerning MTRCL's service or facilities should be referred to TD first. Therefore, TD seems the appropriate party to take up the coordination role in the future.

EU

19. Of the nine communications between EU and the complainant, a number were actually initiated by the latter when he called up the Call Centre for updates. EU's numerous correspondence with Lands D did not bring much progress to the case. Escalation to departmental coordinator's level took place only in August 2010, i.e. five months after the case had become overdue. This cast doubts over EU's ability to bring about prompt resolutions to complaints.

20. The complaint against EU was, therefore, partially substantiated.

Lands D

21. Lands D had tried its best to solicit prompt actions from the responsible parties. It was not clear why it was not given the October letter, which could have helped identify the responsible parties and clarify maintenance responsibilities for early resolution of the water leakage problem. Nonetheless, as Lands D had taken over the Station and its EPIWs and was a recipient of the March letter, its staff should have been more alert at the time. Overall, had Lands D received a little more help from concerned departments, this case could have been resolved earlier.

22. The complaint against Lands D was unsubstantiated.

Hy D

23. Hy D was the coordinator and Government's representative in the West Rail Project. While it was well aware of its own responsibilities over the PTI and had the maintenance schedule in hand, our investigation revealed that it had not been helpful in resolving the matter. It did not lend support to Lands D conscientiously such that the latter had to spend months identifying the responsible party for the repairs. Hy D also relied too much on its electronic map and refused to search its file records. Consequently, it was unable to refute MTRCL's denial of responsibility and clarify matters earlier.

24. The complaint against Hy D was, therefore, substantiated.

TD

25. As the first contact point of the Call Centre for matters relating to MTRCL, TD had a duty to verify information provided by the Corporation (that the location of leakage was outside its jurisdiction) before passing the matter onto others for action. Besides, holding records of the maintenance schedule, it should have assisted in ascertaining the maintenance parties. However, it contented itself with the role of a post box.

26. The complaint against TD was, therefore, substantiated.

Recommendations

27. The Ombudsman recommended that:

Hy D and Lands D

(1) jointly review departmental records to ensure that all relevant parties, including Lands D and MTRCL, have proper records on the apportionment and handover of maintenance responsibilities for all station infrastructure items along the West Rail line;

(2) inform respective district maintenance/land offices of the location of the source documents on these maintenance responsibilities;

(3) develop guidelines for the Call Centre to handle complaints on infrastructure items along the West Rail line;

TD, Hy D and Lands D

(4) consider developing a mechanism to better coordinate departments' efforts in liaison with MTRCL over disputes or complaints concerning shared maintenance responsibilities for infrastructure items along the West Rail line; and

EU

(5) strengthen staff training for the Call Centre and remind its staff members to review case history before making referrals.

A case of inadequate coordination and support among departments

Environmental Protection Department ("EPD")

Case No. OMB 2011/1723 –
Quality Powered Mechanical Equipment label
Allegation: rejecting the complainant's applications for the Quality Powered Mechanical Equipment labels in respect of some second-hand generators on the basis of unpublished assessment criteria – partially substantiated



Details of Complaint

The complainant was a plant and machinery leasing company. In 2008, it applied to EPD for the Quality Powered Mechanical Equipment ("QPME") labels in respect of some Japanese-made second-hand generators it had purchased. Some of the applications were turned down because the manufacture dates of those generators were earlier than the date of the certification letter issued by the Japanese authorities to generators of the same type. The complainant alleged that EPD had failed to state clearly on the application form the requirement regarding the manufacture date of equipment.

2. In early 2011, the complainant applied for the QPME labels in respect of another batch of Japanese-made second-hand generators. However, 18 of them were denied the labels because, according to EPD, they were relatively aged. The complainant alleged that EPD had never published any new requirements regarding the age of equipment.

Response from EPD

QPME Label Scheme

3. Powered machines awarded the QPME labels are those that have been issued a Declaration of Conformity by any European Community member country or a certification letter by the Japanese authorities certifying them as low noise models under the revised quality standards. Such machines are quieter when in operation, more environmentally friendly and have better mechanical performance.

4. The QPME Label Scheme was launched by EPD in 2005. Applications should be accompanied by relevant conformity documents and a noise emission test certificate or report on that particular type of equipment. To prevent abuse of the QPME labels, EPD was considering measures to optimise and improve the Scheme, for example, to require that maintenance records or a noise emission report be submitted as well for applications regarding equipment more than five years old. Consultation with the industry on this would be conducted as soon as possible.

The Complainant's Applications

5. In 2008, the complainant applied for the QPME labels in respect of a batch of Japanese-made second-hand generators. Six of the generators were manufactured before the date of the certification letter issued by the Japanese authorities to that particular type of generators and so did not get the Japanese certification. Consequently, EPD refused to award the QPME labels to them as it was not sure that they conformed to the revised Japanese quality standard.

6. In 2011, the complainant applied for the QPME labels in respect of another batch of second-hand generators which, though certified by the Japanese authorities, had been in use for many years. EPD considered that aged machines would be noisier and lower in environmental efficiency, hence without the "quality" element. In fact, with regard to the service life of powered mechanical equipment, the Japanese authorities had recommended five years as an indicator; while other countries suggested six years as the maximum life with reference to their relevant guidelines on cost-effectiveness. Besides, equipment designated as QPME could only enjoy tax concessions for five years under the Inland Revenue Ordinance ("IRO"). EPD, therefore, refused to award the QPME labels to 18 of the generators which had been in use for over five years.

Observations and Comments

7. EPD had explained in 2008 that the six generators were not awarded the QPME labels because they failed to get the Japanese certification. Although this might be related to their manufacture dates, it was not EPD's cited reason for rejecting the applications. There was, therefore, no impropriety in the department not listing the manufacture date as an assessment criterion on the application form.

8. The Ombudsman considered the complainant's allegation in this regard unsubstantiated.

9. As for the 2011 applications, it was inappropriate for EPD to have used the age restriction, which was still awaiting consultation and not yet implemented, as the reason for not issuing the QPME labels to those 18 generators. Furthermore, as the authority to assess the quality of powered machines, EPD should not have used the tax concession that such equipment could enjoy under the IRO as a factor in deciding whether to award the QPME labels. Such statement amounted to putting the cart before the horse.

10. The Ombudsman, therefore, considered this part of the allegation substantiated.

Conclusion and Recommendations

11. Overall, the complaint was partially substantiated.

12. The Ombudsman recommended that EPD:

(1) consult the industry on using the age of equipment as a criterion in assessing applications for the QPME labels and publish relevant details as soon as possible;

(2) use the original criteria to assess QPME label applications before implementation of the age restriction. It should also remind the industry that if they purchase certified but aged equipment during the transition period, such equipment might not get the QPME labels after implementation of the age restriction;

(3) upon implementation of the age restriction, set an objective "unacceptable" noise level for mechanical equipment such that the industry can make reference to when purchasing second-hand equipment; and

(4) set a validity period for QPME labels as soon as possible and require the industry to submit applications regularly for quality review of equipment already awarded the labels.

A case of improper assessment procedures

Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2011/0657 –
Street obstruction by restaurant
Allegations: (1) failing to revoke the licence of a restaurant which illegally extended its business area – partially substantiated; and (2) allowing the restaurant to set up an alfresco dining area despite its persistent offence – substantiated



Details of Complaint

Restaurant A had often illegally extended its business area to the pavement at night, causing serious street obstruction and other problems. The complainant had reported the problems to FEHD many times, but the situation never improved. He was dissatisfied that the department not only did not revoke the restaurant's licence ("allegation (1)"), but also allowed the restaurant to set up an alfresco dining area to operate from 11 am to 11 pm every day ("allegation (2)"). In the event, the restaurant continued to do business both within and outside the specified area well after the time limit at night. The complainant considered that FEHD had obviously been lax in its control over the restaurant.

Illegal Extension of Business Area

2. Restaurant A, operating in a locality where restaurants often illegally extended their business areas at night, had been identified by FEHD as a black spot. For such black spots, FEHD conducted surprise inspections from time to time. In addition to prosecutions, FEHD would penalise those restaurants convicted by the Court and having accumulated a certain number of points under the department's Demerit Points System. The penalties include temporary suspension or even revocation of licence.

3. Between February 2009 and August 2011, FEHD had conducted 32 surprise inspections on Restaurant A and instituted seven prosecutions. The operator had been tried by the Court on one offence and convicted. FEHD indicated that under its Demerit Points System, the restaurant might lose its licence if it was also convicted of the other six offences.

Approval of Alfresco Dining Area

4. Under established procedures, when a restaurant applies for setting up an alfresco dining area, FEHD will consult the relevant Government departments and the public. The application may be approved if no objection has been received and if the restaurant meets the licensing requirements. Any records of offence will not affect its application.

5. Since July 2010, Restaurant A had been granted approval to set up an alfresco dining area, bounded by a "yellow box" outside its premises. When assessing the restaurant's application for setting up an alfresco dining area, FEHD had not taken into account the fact that the restaurant had already been identified as a black spot.

Our Comments

6. FEHD had indeed taken enforcement actions against Restaurant A. However, the department's regular inspections had been conducted largely at non-peak hours of the restaurant, while its surprise inspections had taken place only once a month on average and mostly before 11 pm. Such actions simply could not curb the restaurant's illegal extension of business area. As a result, the effectiveness of the Demerit Points System was also compromised.

7. The Ombudsman, therefore, considered allegation (1) partially substantiated.

8. FEHD, in considering Restaurant A's application for setting up an alfresco dining area, should not have ignored the fact that it had already been identified as a black spot, especially when it had been prosecuted repeatedly for illegal extension of business area. On two occasions, such offence had indeed occurred after 11 pm. As a matter of fact, after the application was approved, Restaurant A simply ignored the restrictions regarding business hours and area. This showed that FEHD's approval of the restaurant's application only encouraged further offence and aggravated the situation.

9. The Ombudsman, therefore, considered allegation (2) substantiated.

Conclusion and Recommendations

10. Overall, the complaint was partially substantiated.

11. The Ombudsman recommended that FEHD:

(1) adjust its enforcement strategy and conduct more surprise inspections, especially during peak hours, to curb the illegal extension of business area by Restaurant A;

(2) indicate clearly to the Court that Restaurant A had persistently extended its business area illegally, such that heavier penalties should be considered;

(3) when handling an application from a restaurant with an offence record for setting up an alfresco dining area, examine carefully whether the offence has been completely rectified; and

(4) after approving any such application, monitor closely the restaurant's compliance with the restrictions regarding business hours and area, and take strict enforcement actions in case of non-compliance.

A case of lax enforcement

Food and Environmental Hygiene Department ("FEHD"), Lands Department ("Lands D") and Buildings Department ("BD")

Case No. OMB 2011/3155A, B & C – Illegal operation of hawker stalls

Allegations:

FEHD – failing to control the unauthorised extension of business area by a fixed-pitch stall – substantiated

Lands D and BD – shirking responsibility in clearing the platform and other unauthorised building works of the stall – substantiated



Details of Complaint

Since 2009, the complainant had repeatedly complained to FEHD, Lands D and BD about the unauthorised extension of business area by a fixed-pitch stall ("Stall A") erected against the external wall of a building. Stall A had a fixed-pitch hawker licence issued by FEHD. The extended portion of Stall A, comprising unauthorised building works ("UBW") that encroached on the pavement, was occupied by an unlicensed hawker stall ("Stall B"). The complainant alleged that:

(1) FEHD had failed to control the unauthorised extension of business area by Stall A; and

(2) Lands D and BD had disagreed on the authority for clearing the platform and UBW of Stall B and shirked their responsibility, thus allowing the problem to persist.

Departments' Responses

FEHD

2. Under the Public Health and Municipal Services Ordinance, no one shall hawk on the street except with a valid licence issued by FEHD.

3. FEHD considered that it was only responsible for overseeing the operation of Stall A. Hence, its enforcement actions had focused all along on obstruction of the street by the goods of Stall A. Stall B was operated within the UBW and did not constitute hawking on the street. FEHD, therefore, considered Stall B beyond its purview.

Lands D

4. Under the Land (Miscellaneous Provisions) Ordinance, Lands D is responsible for controlling any unlawful occupation of unleased land (i.e. Government land). Lands D admitted that it could act on its own and deal with Stall B's platform and display racks which were erected on the pavement. In July 2010, the department posted a notice to order the operator of Stall B to cease the occupation of Government land. Subsequently, the stall operator voluntarily removed a portion of the platform. Nevertheless, Lands D considered BD to be responsible for clearing the overhanging structure affixed to the external wall of the building in accordance with the Buildings Ordinance ("BO").

5. Lands D explained that since all the UBW were connected structurally, they could only be removed safely one by one from top to bottom. If Lands D acted on its own to remove the platform and display racks at the lower part of the stall, the UBW installed above would be subject to the risk of collapse for lack of support. Lands D, therefore, needed to carry out a joint operation with BD to clear all the UBW in a single operation.

BD

6. BD is empowered by the BO to deal with UBW in private buildings.

7. BD noted that the overhanging structure belonged to the operator of Stall B, not the owners of the building. Together with the other parts of Stall B, they formed an integral structure erected entirely on the pavement. Under the BO, unleased land and streets vested with Government are exempt from its provisions. BD simply could not serve a removal order to the land owner (i.e. Government) regarding the UBW. BD, therefore, did not consider that it had the authority to take enforcement action.

Our Findings

8. FEHD's initial refusal to take enforcement action against the unlicensed hawking on the street by the operator of Stall B was a total disregard of the obvious fact that the pavement was being occupied for unlicensed hawking. Subsequently, FEHD sought legal advice from the Department of Justice ("D of J"). D of J considered that FEHD could institute prosecutions against the operator of Stall B for unlicensed hawking after gathering sufficient evidence. This showed that FEHD's arguments for not taking enforcement actions in the past were totally unjustifiable.

9. The Ombudsman, therefore, considered allegation (1) against FEHD substantiated.

10. According to BD's analysis, all the UBW of Stall B could be considered as one large object that occupied Government land. In such case, Lands D could have taken enforcement actions on its own and removed all the UBW. Then there should have been no need to worry about the technical difficulties involved in clearance by stages. At the same time, it was not outside BD's jurisdiction to deal with UBW projecting from the external wall of a building. Based on the usual division of work between BD and Lands D in handling such kind of UBW, BD could have served a removal order on the title owners of the building's external wall. Any dispute between the owners and the stall operator should be resolved by themselves.

11. Evidently, both Lands D and BD had powers to take enforcement actions. If there were any doubts or concerns, they should have addressed the problems jointly in a pro-active manner, rather than shifting the responsibility to each other. The Ombudsman, therefore, considered allegation (2) against both departments substantiated.

12. The illegal activities revealed in this case were serious. The stall had expanded illegally to such an extent that it looked like a typical shop. Nevertheless, all the three departments involved were clouded by a compartmental mentality and they attempted to evade responsibility with such excuses as Government policy, limitation of powers and technical difficulties. Their performance was disappointing.

Recommendations

13. The Ombudsman recommended that:

(1) FEHD take stringent enforcement actions quickly against the unlicensed hawking activities; and

(2) Lands D and/or BD expeditiously clear all the UBW at the location concerned in the most efficient way. If the two departments still have divergent views, they should resolve their differences by consulting the Development Bureau together with D of J immediately.

A case of compartmental mentality and shirking of responsibility

Highways Department ("Hy D"), Efficiency Unit ("EU") and Lands Department ("Lands D")

Case Nos. OMB 2010/1202-1203;
OMB 2010/2142 –
Complaint handling
Allegation:
Hy D – failing to handle properly a complaint about tree management – unsubstantiated
EU – same – partially substantiated
Lands D – same – substantiated



Details of Complaint

The complainant called the 1823 Call Centre ("Call Centre") under EU to complain about obstruction of vision caused by some tree branches to passengers waiting at a bus stop. A few months later, she was told that the Government departments concerned would follow up the matter. When the problem remained unresolved, however, she made a number of calls to the Call Centre to urge for prompt Government action, but to no avail.

Our Findings

Mechanism for Handling Tree Management Complaints

2. In 2009, the Development Bureau set up an interdepartmental task force to centralise the handling of tree-related complaints to ensure public safety. The task force was formed by EU and other relevant departments (including Lands D) with the Call Centre as the central contact point to receive complaints from the public. The Call Centre would maintain contacts with all the departments concerned and monitor the progress of cases. Where there were delays, the Call Centre would escalate the cases to the management of the departments concerned and issue a monthly report of outstanding cases ("monthly case reports") for follow-up action by the departments.

Responsibility for Tree Management

3. Hy D did not have any responsibility in this case as it had neither received the complaint nor contacted the complainant.

4. In the absence of any responsible department, Lands D will handle natural vegetation on unleased or unallocated Government land. In general, however, Lands D will instruct the relevant District Lands Office to conduct on-site assessment and arrange for necessary removal or pruning only when complaints or referrals are received. As the subject tree was on unallocated Government land, it should be the responsibility of Lands D.

Response from EU

5. On receipt of the complaint, the Call Centre referred it to Lands D on the same day. The complainant subsequently made a number of calls to the Call Centre to urge for prompt Government action and the Call Centre immediately notified Lands D on each occasion. The Call Centre also issued reminders to Lands D and directly contacted the relevant District Lands Office. Moreover, on learning that tree pruning had been arranged, it also notified the complainant on the same day.

6. The Call Centre had issued monthly reports to the coordinator of Lands D to remind the department of pending and overdue cases. Apart from that, it had sought assistance from the Lands D liaison officer who was responsible for the complaint hotline service.

7. EU considered that since different Government departments had their own concerns when handling complaints, the only thing the Call Centre could do was to strive to monitor the progress and advise the departments so that complaints could be resolved as soon as possible.

Response from Lands D

8. Lands D explained that the local District Lands Office had conducted a site inspection and found the tree having no imminent danger of collapse. While overgrowing tree branches might cause inconvenience, it would not affect road safety. At the time when the complaint was lodged, there were around 500 similar cases to be handled by the relevant District Lands Office and it had to prioritise the cases. In response to the reminders from the Call Centre, Lands D had contacted the complainant and conducted a site inspection to make sure that the situation has not deteriorated.

9. Nevertheless, Lands D agreed that the District Lands Office concerned had failed to act properly as it did not follow the internal guidelines to give the complainant a timely reply and notify her of progress. As such, Lands D had reminded its staff to follow departmental instructions in replying to complainants, while at the same time directed all District Lands Offices to deploy manpower and resources appropriately when handling complaints, monitor the case progress and adhere to the internal guidelines and procedures.

10. Lands D pointed out that referrals from the Call Centre were usually handled and responded to by the relevant District Lands Offices directly. Therefore, it had not read those monthly case reports. From June 2010, Lands D would hand over the monthly case reports to the relevant District Lands Offices and Sections to urge for their prompt follow-up action and reply.

Our Comments

11. Considering the large number of complaints Lands D had to handle, it was not unreasonable for the department to prioritise the cases before handling. However, it should have contacted the complainant direct or via the Call Centre to let her know how and when her case would be handled. During the 11 months from July 2009, when the complainant first lodged her complaint, to the time of Lands D's arrangement for tree pruning, the complainant had made 13 calls to the Call Centre urging for follow-up actions, while the Call Centre had issued monthly case reports to the management of Lands D. Nevertheless, Lands D still failed to follow up actively the case and sometimes even made no response.

12. We considered Lands D to have failed to follow its internal guidelines and complaint handling mechanism, conduct site inspections or reply to the Call Centre in a timely way. Moreover, despite repeated reminders from the Call Centre, it had failed to attend to the matter. There was a large discrepancy between the department's work attitude and efficiency on the one hand and its performance pledge and public expectation on the other. We found this unacceptable.

13. While the Call Centre had indeed promptly referred the case, it failed to alert the senior level or take further follow-up actions when its multiple reminders were not heeded. We considered the Call Centre's efforts in monitoring the relevant departments' complaint handling process clearly weak and ineffective.

Conclusion and Recommendations

14. As noted above, Hy D was not involved in this case and so the complaint against Hy D was unsubstantiated. As regards the complaints against Lands D and EU, The Ombudsman considered them substantiated and partially substantiated respectively.

15. The Ombudsman recommended that Lands D review its mechanism in handling complaints about tree management and define the duties of frontline staff in dealing with this kind of complaints (including issuing a reply to the complainant and the Call Centre) and the timeframe. To ensure proper and prompt follow-up of complaints, Lands D should also clarify the supervisory role of management at different levels and the monitoring responsibility of the coordinators after sending the monthly case reports to the relevant District Lands Offices and other sections.

16. The Ombudsman also recommended that EU review its complaint handling mechanism, state clearly the situation where its staff should escalate a complaint to the management level and evaluate the effectiveness of the mechanism.

17. Lands D and EU accepted our recommendations.

A case of failure to follow procedures and low efficiency

Hong Kong Housing Society ("HKHS")

Case No. OMB 2010/5752-5753 – Housing for senior citizens

Allegation: failing to disclose in a timely manner the actual income-expenditure situation and the details of subsidy regarding the management fee of a housing estate under the Senior Citizen Residences Scheme – substantiated



Details of Complaint

The complainants were tenants and committee members of the Residents' Association of a housing estate under the Senior Citizen Residences Scheme of HKHS. Allegedly, there had been management fee budget deficits and operating losses for the estate over the past five years. In mid-2010, HKHS decided to increase the management fee by 5% with effect from January 2011.

2. HKHS explained that it had been providing subsidy to cover fully the operating loss. The increase in fees was to improve the financial situation and not an attempt to ask the tenants to cover the shortfall. However, the complainants claimed ignorance of the gap between the management fee received and the actual expenditure of the estate. HKHS seemed to be withholding essential information from the tenants and failed to explain its policy and review mechanism with regard to the subsidy. They were worried about their financial future should HKHS decide to cancel or change the mode of such subsidy.

Response from HKHS

3. Senior citizens intending to take up tenancy in the estate, which can last for life, have to pay in advance an "entry contribution fee" upon moving in and then a monthly management fee. Application documents state that the management fee is subject to adjustments depending on the prevailing economic conditions and operational needs. Since the estate is designed for senior citizens, there are more nursing care and service facilities, resulting in higher management and repair costs. To attract senior citizens, the management fee was set at $2.2 per square foot, in spite of an estimated cost of $4 at the time of intake in 2004.

4. HKHS argued that the level of management fee charged was a commercial decision. That the expenditure exceeded the income for the estate was within its expectation and HKHS was willing to subsidise the shortfall. Nevertheless, HKHS had not formulated any long-term subsidy policy or review mechanism. On the other hand, it had no plans to change the current mode of subsidy to avoid financial pressure on the tenants. Operating loss would not be shifted to them, either. In fact, measures had already been introduced to increase revenue and control expenditure without compromising service standards.

5. Furthermore, the management fee for the estate had remained unchanged since intake six years ago. Management and repair costs had, however, soared due to inflation and higher staff costs. Between May and December 2010, HKHS representatives attended seven meetings of the Residents' Association to explain the rationale behind the increase in management fee and other related arrangements. It had, in response to tenants' requests, lowered the rate of increase and deferred the effective date of the new management fee.

6. HKHS added that the social welfare agency responsible for providing management services in the estate would prepare the annual budget and the quarterly income and expenditure statement which, upon approval by HKHS, would be made available to the Residents' Association. The quarterly income and expenditure report as well as the annual audit report would be displayed in common areas for tenants' reference. Actually, HKHS had arranged for potential tenants a site visit of the estate at the time of application so that they could understand better its mode of operation. HKHS never intended to withhold any information about the situation of the management fee.

Our Comments

7. With the soaring prices in recent years, an increase in management fee by HKHS to meet the operational needs of the estate was understandable.

8. Despite its efforts to be more open and transparent in handling the financial reports of the estate, HKHS had failed to disclose to the tenants in advance that the management fee charged was not enough to cover the estimated expenditure. Although it claimed at various meetings that the increase in management fee had nothing to do with operating losses, the amount of management fee paid by the tenants and the subsidy provided by HKHS were actually closely related to the management expenditure of the estate and the losses incurred. The adjustment in management fee was in fact meant to cover the additional expenses resulting from a rise in related costs.

9. The Schedule to the residential lease of the estate stipulates that HKHS may levy an "additional management charge" should the management fee received fail to meet expenses. At various meetings with the complainants and the tenants, however, HKHS had failed to answer their queries on matters relating to the management fee. Nor had it explained clearly the specifics about its subsidy system and long-term policy. The complainants could not tell how much subsidy HKHS was able to absorb and for how long such subsidy could last. Surely they would feel anxious.

Conclusion and Recommendations

10. Overall, The Ombudsman considered the complaint substantiated.

11. The Ombudsman recommended that HKHS:

(1) consider to state clearly in the relevant application and information kit whether it subsidises the management fee. If it does, the principle on such subsidy should be included;

(2) provide comprehensive data should tenants raise doubts and enquiries concerning the management fee, so as to prove that the increase in fee does not contravene the principle stated; and

(3) improve communication with the tenants and provide the information required when being questioned in order to support its stance and to avoid misunderstanding.

A case of need for timely disclosure of essential information to clients

Housing Department ("HD")

Case No. OMB 2011/1216 –
Public housing allocation
Allegation: making inappropriate allocations to the complainant, thereby causing delay in her accommodation in public rental housing – substantiated other than alleged



Details of Complaint

The complainant applied to HD for public rental housing ("PRH") two years ago and subsequently received two housing offers. She rejected both offers on the grounds that the first flat allocated had negative environmental indicators ("EIs") while the second flat was more than 30 years old and she was worried that she might not have the money to renovate it. Since then, HD made no further offers to her. She considered HD's inappropriate allocations to have resulted in delay in her accommodation in public housing.

Flats with Negative EIs and Renovated Flats

2. HD explained that flats bearing negative EIs (e.g. flats that involved unpleasant incidents) would also be allocated by random computer batching to Waiting List applicants to ensure better utilisation of public housing resources. In fact, these flats might have good scenic views, estate facilities and transport services.

3. Whether the flats to be allocated have negative EIs would not be mentioned in HD's offer letters to applicants. Relevant details would be provided to the applicants by the estate office staff during flat inspection. Applicants could inspect the flats and consider the information given by the staff before deciding whether to accept the offers. The progress of public housing allocation would depend on the availability of flats within an applicant's chosen district. Refusal to accept flats with negative EIs would not delay the allocation process.

4. Recovered flats would be renovated by HD according to the prevailing standards and with damaged facilities replaced. After renovation, these flats would be in a condition equivalent to those newly-built with all the basic facilities (including water and electricity) installed so that they are ready for immediate occupation. Whether the flats should be further refurbished is for the tenants to decide.

Reasons for Refusal by the Complainant

5. According to HD, the complainant had been given two offers but did not turn up for flat inspection and other formalities on both occasions. She refused the first offer on the grounds that she had indicated to the estate office her preference for a certain housing estate. As the flat had negative EIs, the offer was not counted as valid. When HD made the second offer to her, she only expressed her dissatisfaction over the allocation in an old housing estate and reiterated her wish for accommodation in a new housing estate within her chosen district. HD found this justification not acceptable and so she only had two more chances of allocation.

Response from HD

6. In general, HD allows applicants to inspect a flat bearing negative EIs and learn about all the details of the flat before deciding whether to accept the offer. HD considered the arrangement appropriate.

7. The complainant rejected the first offer because she wanted to be accommodated in a housing estate within a certain district. Her refusal to accept the offer had nothing to do with the negative EIs of the flat. It had not caused any delay in her accommodation or affected her chances of allocation. The flat in the second offer had actually been completely renovated but she just refused the offer without inspecting it. The Social Welfare Department later assessed her case and recommended that her request for accommodation in her chosen district be accepted. Nevertheless, due to the limited resource of public housing available in that district and the huge demand, she would need to wait for some time for that allocation.

Our Observations

8. In the absence of specific guidelines on the provision of information on negative EIs upon an applicant's enquiry before flat inspection, different estate offices adopted different practices. After we had initiated the investigation, HD indicated that it would draw up instructions to require staff to inform the applicants of the negative EIs of the allocated flats, should there be such enquiries. Applicants accepting such offers would be required to sign a document to confirm their knowledge of the relevant information.

9. While this measure could standardise the practice and avoid verbal disputes, it would not apply to applicants who made no prior enquiries about the flats. The problem revealed in this case would remain unresolved and this might give people the impression that there was unfairness in this regard.

10. If applicants had prior knowledge of the negative EIs of the allocated flats, they could then ask the estate offices about the details and consider whether they should inspect the flat. After that, they could make a prompt decision. This should save unnecessary work and manpower arrangements and the flat could be put back on the available list for allocation as soon as possible.

Conclusion and Recommendations

11. We considered that as the department responsible for the development of public housing, HD should make every effort to better utilise the resources. In fact, the complainant was offered another flat three months after her refusal to accept the one bearing negative EIs. This proved that HD had not delayed in making allocation. Nevertheless, there was still room for improvement in the allocation of PRH flats with negative EIs.

12. Overall, The Ombudsman considered the complaint substantiated other than alleged.

13. Regarding the allocation of PRH flats with negative EIs, The Ombudsman recommended that HD:

(1) inform the applicants of the negative EIs in the offer letters and advise them to ask the relevant estate offices for details so that they could decide whether to inspect the flats; and

(2) enhance publicity to promote any advantages that such flats may have and explain that the flats would still be allocated by random computer batching. Besides, HD should explain to the applicants that they can decide whether to accept the offer after getting all the details. This should help eliminate the negative impression that the public may have about such flats.

A case of inappropriate administrative arrangements

Immigration Department ("Imm D")

Case No. OMB 2010/5273 –
Refusal of visitors' entry
Allegations: (1) failing to follow the established procedures in refusing two visitors' entry into Hong Kong – substantiated; (2) denying them contact with the outside during detention – partially substantiated; and (3) failing to provide an official interpreter – partially substantiated



Details of Complaint

One morning in 2010, the complainant's two relatives from India arrived in Hong Kong. Imm D refused them entry. The complainant alleged that Imm D had:

(1) failed to follow the established procedures in refusing them entry;

(2) denied them contact with the outside during detention; and

(3) failed to provide a qualified interpreter.

The Event According to Imm D

2. Upon arrival at the Hong Kong International Airport, the two visitors concerned were interviewed by an Immigration Officer ("Officer A"). As they had difficulty communicating in English, Officer A asked another Indian passenger, who knew both English and Hindi, to provide voluntary interpretation service. Through the interpreter, Officer A told the visitors that they might contact the local consul, lawyers or relatives. The voluntary interpreter left immediately after the interview.

3. Later, a Senior Immigration Officer examined the two visitors' case and decided to refuse them entry. They were detained in the airport in accordance with the law, pending repatriation. Officer A then issued them a "Refusal Notice" (in English and Chinese) and a "Notice of Detention" (in Hindi). He asked whether they possessed any "restricted articles", such as sharp objects and camcorders or mobile telephones with camera function. One of the visitors then handed over his mobile telephone.

4. The two visitors returned to India by aeroplane in the afternoon of the same day.

Response from Imm D

5. Imm D's guidelines stipulated that five notices should be issued to visitors who were denied entry. In addition to the two notices mentioned above, the other three were "Notice on Detention Policy", "Notice to Passenger" and "Notice to Non-Chinese Citizen in Custody". Those three documents detailed detainees' rights and were available in multiple languages (including Hindi). Imm D admitted that Officer A had in this case failed to provide the visitors with those three notices. When he took the mobile telephone of one of the visitors, and subsequently returned it, he had also failed to fill out the relevant forms and seek the visitor's signature for acknowledgement in accordance with the guidelines.

6. Each year, an average of about 10,000 visitors of over 170 nationalities who can understand neither Chinese nor English are interviewed at the airport. It was Imm D's usual practice to invite other passengers of the same nationality as the interviewees' to act as voluntary interpreters on the spot, unless the case was complicated or sensitive or involved an offence. Arranging for an official interpreter to come to the airport would take time and some interpreters were reluctant to come. The arrangement of engaging voluntary interpreters would avoid interviewees' prolonged waiting.

Our Comments

7. Officer A's issuing only two notices to the visitors in this case clearly contravened Imm D's guidelines. The other three notices served to explain the factors which Imm D would take into account in determining whether a person should be detained, as well as the basic rights of and treatment for detainees. Quite complicated details were included in the notices. We, therefore, doubted whether Officer A had fully and accurately explained the details to the visitors during the interview merely with the help of a voluntary interpreter. Moreover, it was improper of Officer A to have taken the visitor's property without making any record. The Ombudsman, therefore, considered allegation (1) substantiated.

8. There was no evidence that Imm D staff had expressly prohibited the two visitors from contact with the outside. However, no interpreter was present when one of the visitors surrendered his mobile telephone. With the language barrier, and not having been issued with the relevant notices, the two visitors might have mistakenly inferred from Officer A's temporary seizure of the mobile telephone that they were forbidden from making contact with the outside. In the light of the above, The Ombudsman considered allegation (2) partially substantiated.

9. It was indeed not Imm D's standing practice to provide an official interpreter for such interviews. Nevertheless, refusal of entry, detention and temporary seizure of property all involve substantial and fundamental interests of the persons concerned. We considered it grossly inadequate of Imm D to rely on voluntary interpreters without an assurance of quality to communicate with foreign visitors in such cases and to allow officers who themselves do not know the foreign languages to assess whether the voluntary interpreters had no problem communicating with the visitors. The Ombudsman, therefore, considered allegation (3) partially substantiated.

Conclusion and Recommendations

10. Overall, the complaint was partially substantiated.

11. The Ombudsman recommended that Imm D:

(1) instruct frontline staff to adhere to departmental guidelines by issuing all the specified documents in relevant languages to visitors being refused entry and in detention, and to strictly follow the procedures relating to seizure and return of "restricted articles" so as to safeguard visitors' interests;

(2) simplify the above-mentioned documents and make available multiple-language versions of all such documents; and

(3) explore the feasibility of engaging official interpreters more fully or using video conferencing and other means to facilitate interviewing and the handling of detention procedures.

A case of improper work arrangements and staff's failure to follow guidelines

Lands Department ("Lands D")

Case No. OMB 2010/5819 – Unauthorised structure

Allegation: failing to take appropriate action on an unauthorised structure on the roof of a building and to carry out the necessary repairs – partially substantiated



Details of Complaint

The complainant lived on the top floor of a building. She had complained to the Buildings Department ("BD") that an unauthorised structure on the roof had caused serious water seepage at the ceiling of her flat. BD found out that the roof was owned by the Financial Secretary Incorporated ("FSI") and so referred the case to Lands D, the agent of FSI, for follow-up action. However, Lands D did not take appropriate action on the unauthorised structure or carry out the necessary repairs.

Our Findings

2. The roof was previously private property. Upon the expiry of the land lease for the site of the building at the end of 1992, Government started to make the necessary arrangements with all the owners of the building to renew the lease. While the legal formalities regarding the regrant of the lease were in progress, the properties involved were temporarily vested in FSI, with Lands D handling those formalities on behalf of FSI. Meanwhile, the previous owner of the roof passed away and the legal personal representative did not complete the regrant formalities. As a result, Government could not assign the title of the roof back to that representative.

3. In February and March 2010, the complainant complained to BD that water seepage from the roof had caused concrete spalling and corrosion of the steel reinforcement at the beams of her flat. After investigation, BD also found noticeable cracks on the walls of the unauthorised structure on the roof. Its condition had deteriorated, rendering it potentially dangerous. In mid-March, BD wrote to Lands D and urged the latter to remove the unauthorised structure as soon as possible. Despite BD's subsequent reminders, Lands D took no action. In early August, Lands D replied to BD, refusing to remove the unauthorised structure on the grounds that FSI was not the permanent owner of the roof.

4. In mid-October, BD issued another reminder to Lands D. It was not until then that Lands D conducted a site inspection and sought legal advice.

Response from Lands D

5. Lands D explained that as FSI would eventually have to assign the title of the roof back to the legal personal representative of the previous owner, FSI never took possession of or used the roof. Hence, it should not be liable for any matters related to the roof. Moreover, as some people related to the previous owner (i.e. the occupants of the unauthorised structure) were still using the roof, Government would not enter the unauthorised structure without the consent of the owner's legal personal representative or the occupants. Besides, the case involved complicated policy and legal issues. To find a feasible solution, Lands D had to seek legal advice on the removal of the unauthorised structure and the handling of the water seepage problem.

6. Subsequently, on receipt of the legal advice, Lands D took action against the legal personal representative of the previous owner and other relevant parties in April 2011. It ordered them to remove the unauthorised structure and to carry out the necessary repairs within a specified timeframe.

Conclusion and Recommendations

7. This Office was aware of the complicated legal issues involved. Nevertheless, as the agent of the current owner of the roof (i.e. FSI), Lands D had an obligation to resolve the problems as quickly as possible. It should not have let the complainant and other residents suffer from prolonged nuisance caused by the water seepage and face the hazards posed by the unauthorised structure.

8. In this incident, Lands D initially made no attempt to clarify the condition of the unauthorised structure or the responsibility of FSI. It also procrastinated in responding to BD's advice and reminders. Lands D argued that it had not taken any action because Government was not the permanent owner of the roof. We found its argument untenable. Lands D could have resolved the critical problems expeditiously with public funds and afterwards claimed the expenses from the parties concerned. In any event, the department should protect public interest and ensure building safety rather than shying away from the problems.

9. In this light, The Ombudsman considered the complaint partially substantiated.

10. Lands D finally took possession of the roof and, following our recommendations, removed the unauthorised structure and carried out repairs on the seepage.

A case of rigid attitude and delay

Leisure and Cultural Services Department ("LCSD")

Case No. OMB 2011/1181 –
Repairs of venues
Allegation: delay in repairing the glass roof of a pedestrian access to a playground – substantiated



Details of Complaint

In January 2011, the complainant noticed that two glass panels on the roof of a pedestrian access to a playground were broken and posed a danger to passers-by. He wrote to LCSD and asked for follow-up actions. After two months, he found the glass panels still not repaired. In response to his enquiry, LCSD replied that it was ordering the glass materials and would carry out the works in May. Considering LCSD to have delayed in handling the matter, the complainant complained to this Office.

2. After receiving the referral of the case by this Office, LCSD took another two and a half months to give the complainant a substantive reply, making him even more dissatisfied.

Sequence of Events

3. The playground was completed in late October 2009 and handed over to LCSD for management, with one year of defects liability period ("DLP") provided by the Housing Department ("HD").

4. In August 2010, LCSD noticed the broken glass panels on the roof of the covered pedestrian access. The damage was believed to be caused by objects fallen from a nearby construction site. HD denied repairs responsibility because the damage was not due to any defect in construction or materials. LCSD then informed the Architectural Services Department ("Arch SD") to follow up.

5. For public safety, Arch SD removed the broken glass in late August and covered the opening with wooden planks to provide temporary shelter from rain. Since Arch SD would only take over the daily maintenance service for the venue on expiry of the DLP, it needed special funding to be arranged by LCSD to start the repairs.

6. At that time, the venue manager ("Manager A") of LCSD responsible for following up with the repairs wrongly believed that the recurrent costs provided for the venue would be automatically transferred to Arch SD on expiry of the DLP at the end of October 2010. As such, she only forwarded the specifications of the glass materials to Arch SD without attending to the funding arrangements. Neither did Arch SD mention to her anything about the charges for repairs. It was not until she received the complainant's enquiry in January 2011 that she realised Arch SD had not started the repair works pending the requisite funds.

7. After clarifying the funding arrangements with the Finance Section, Manager A applied for the issue of an allocation warrant to Arch SD in the same month. It took three months to order the glass panels and Arch SD finally completed the repair works in mid-May 2011.

Response from LCSD

8. LCSD admitted that Manager A had not adequately communicated with Arch SD when discussing the repair works. Had she fixed a reasonable completion date with Arch SD and followed up with the progress of the works more proactively, the delay could have been avoided. LCSD reminded Manager A of the proper procedures in handling the repairs of venues. It would also arrange for her supervisor to give her more guidance.

9. To prevent recurrence of similar incidents, LCSD issued the Guidelines on Repair and Maintenance of Leisure Facilities to the staff of all its district offices in October 2011. The Guidelines set out the funding arrangements between LCSD and Arch SD, especially in relation to facilities newly completed or still under a DLP. Frontline staff members are also required to notify their senior managers of all repair works not completed within one month to ensure timely follow-up actions.

10. As regards the delay in replying to the complainant, LCSD explained that it was because of the need to reach consensus with Arch SD on such issues as repairs responsibility and funding arrangements. LCSD apologised to the complainant for the delay.

Our Observations

11. LCSD was aware of the damaged glass panels in August 2010 but took nine months to repair the glass roof. There was clearly a delay. Manager A had assumed that Arch SD would not only receive the transferred funds automatically and start the repairs, but would also take the initiative to inform her should it not receive the funding. Consequently, she was totally unaware that the repair works had not started at all. As a matter of fact, there had not been any relevant guidelines in LCSD before this incident, so we believed that its frontline staff probably lacked a correct understanding of the funding arrangements and that it was not just the problem of any individual staff.

12. LCSD gave a reply to the complainant two and a half months after our referral, much longer than the usual time of around one month. Besides, the reply failed to explain clearly the reason of delay and did not properly address the complainant's concern.

Conclusion and Recommendation

13. LCSD failed to provide clear guidelines to its staff, resulting in delay of works. It also failed to reply to the complainant within a reasonable time. The Ombudsman, therefore, considered the complaint substantiated.

14. LCSD had adopted improvement measures (paragraph 9) and apologised to the complainant. We urged LCSD to conduct regular reviews after implementing the Guidelines on Repair and Maintenance of Leisure Facilities.

A case of delay

Official Receiver's Office ("ORO")

Case No. OMB 2011/1016 –
Handling of report
Allegation:
unreasonably requesting an informant to conduct a bankruptcy search and to verify the information he provided to ascertain a suspected person's identity – substantiated



Details of Complaint

The complainant suspected that a bankrupt estate agent was using a colleague's account to receive his commissions. He reported the case to ORO by email and provided the name, address, estate agent's licence number and employer's name of the suspected person.

2. Upon ORO's request for the bankruptcy case number of the suspected person, the complainant made an online search at his own expense and advised ORO of the case number. He was later further requested to verify with the employer concerned to ascertain whether the suspected person was a bankrupt and to provide supporting documents. The complainant, unable to obtain such information, alleged that ORO was unreasonable in making such demands to an informant.

Sequence of Events

3. On receipt of the report from the complainant, a General Registry ("GR") staff input the English name provided by him into ORO's Management Information System and found 11 bankrupts with the same English name. Only one of the bankrupts' Chinese name and English alias also matched exactly with the information provided by the complainant.

4. GR mistook that person to be the suspected person and so asked the responsible case officer ("Officer A") to follow up. However, Officer A noticed that the address was at variance and so GR asked the complainant to provide the suspected person's bankruptcy case number or Hong Kong Identity Card ("HKIC") number for cross-checking. In response, the complainant conducted a bankruptcy search on ORO's website and found a case number, which belonged to the same bankrupt mentioned in paragraph 3 whose Chinese and English names were an exact match. While providing the case number, the complainant also requested ORO to contact the Estate Agents Authority ("EAA") to further verify the person's identity.

5. Based on that case number, Officer A cited the English name and HKIC number of the bankrupt of that case to make an enquiry with EAA. However, EAA replied that this person was not a licensed agent. Thereafter, Officer A also issued a letter to the bankrupt of that case, requesting him to give an updated account of his employment status.

6. Since the identity of the suspected person was still not confirmed and an email reminder was received from the complainant, Officer A requested GR to seek further information from the complainant, asking him to verify with the employer concerned and provide the supporting documents. At this point, GR reminded Officer A that doing so might lead to complaints, but it eventually issued the email when Officer A insisted that it was necessary.

7. After we commenced our inquiry, ORO scrutinised the particulars of the 11 bankrupts with the same English name again and finally identified another person whose address was similar to the one provided by the complainant. It was then discovered that the occupation and estate agent's licence number submitted earlier by that person also tallied with the details in the complainant's report. The identity of the suspected person was thus finally confirmed.

Response from ORO

8. ORO explained that, depending on the circumstances of each case, an informant might or might not be able to engage the assistance of the employer concerned. In the interest of time, Officer A had asked the complainant to make further verification. However, ORO conceded that Officer A lacked sensitivity and failed to fully consider the difficulties it would cause to the complainant. ORO apologised for that.

9. ORO also admitted that had GR been able to go the extra mile and scrutinise all the particulars when searching the Management Information System, it should have identified the correct individual at an early stage. In this light, ORO have drawn up relevant guidelines requiring that staff should not only search by names, but should also scrutinise all other information provided by informants.

Our Observations and Comments

10. In his first email making an offence report, the complainant had already provided the name, address and estate agent's licence number of the suspected person. In fact, it was possible to confirm the suspected person's identity simply with the address. Nevertheless, ORO repeatedly asked the complainant for further information, sent a letter to EAA and made enquiry with an unrelated bankrupt based on a wrong case number. All these actions were a complete waste of time. It showed ORO's carelessness and impropriety in handling the matter.

11. After examining all the email correspondence, we considered ORO to have failed to communicate clearly when seeking further information from the complainant, resulting in his misunderstanding that he had to conduct a bankruptcy search at his own expense. Had ORO clearly told the complainant that he was only required to furnish the information already in his possession and provided him with the case officer's telephone number for enquiries, it might have avoided giving him a wrong impression that ORO was shirking the responsibility of investigation to him.

12. We could understand that ORO might need to seek further information from informants in the course of investigation. However, ORO should show consideration for the informants and state the reasons when making such demands to avoid misunderstanding.

Conclusion and Recommendations

13. In the light of the above, The Ombudsman considered the complaint substantiated.

14. The Ombudsman recommended that ORO:

(1) remind staff to communicate clearly with informants; and

(2) conduct regular reviews on the effectiveness of the guidelines on searching the Management Information System.

A case of carelessness and lack of consideration

Official Receiver's Office ("ORO")

Case No. OMB 2011/2730 –
Scheme $6,000
Allegation: being unfair to other bankrupts in deciding not to claim the $6,000 from those bankrupts whose property was held by ORO as trustee – substantiated



Details of Complaint

Scheme $6,000 ("the Scheme"), launched by the Government in late August 2011, gave out a sum of $6,000 to each holder of a valid Hong Kong permanent identity card aged 18 or above. Bankrupts who met the eligibility criteria could also register for the Scheme.

2. Under the Bankruptcy Ordinance, the money thus obtained by a bankrupt is regarded as "after-acquired property" and subject to claims by trustees. However, ORO decided not to claim the $6,000 from bankrupts whose property was held by the department as trustee ("ORO cases"). As for other bankrupts whose cases were managed by outside trustees ("outside cases"), the trustees had the discretion to decide whether or not to claim the money.

3. A number of bankrupts of outside cases lodged a complaint with this Office, alleging that ORO's decision was inappropriate and unfair to them.

Reasons for ORO's Decision

4. ORO indicated that the Scheme was intended to "leave wealth with the people". Few creditors would actually benefit even if the department made a claim against the bankrupts for that $6,000. It was because ORO had a priority right to deduct from such after-acquired property the outstanding legal fees and administration expenses that a bankrupt or creditor must settle with the department. However, as most bankrupts of ORO cases had little or no assets at all, if ORO made a claim for that $6,000, little would be left for apportionment to creditors after deducting such fees and expenses.

5. In the past, when Government introduced relief measures (such as rent and rates exemptions) targeted at public housing tenants and low-income groups, ORO did not make a similar non-claim decision. Nevertheless, most bankrupts who benefitted from such measures would spend the money thus obtained on family needs. Therefore, ORO normally would not make a claim when the bankrupts reported the income.

6. Under the Scheme, eligible persons must submit a registration form in order to receive the $6,000. If the department had decided to make the claim, its staff would have to ask the bankrupts individually if and when they received the money so that the notice of claim could be served on them within the legal time-frame. In case the bankrupt had obtained and spent the money, or waited till after his/her discharge to register for the money, follow-up action would be even more complicated. As there were over 36,000 ORO cases, claiming from the bankrupts the $6,000 under the Scheme would require considerable staff and other resources and was, therefore, not cost-effective.

Outside Cases

7. The majority of bankruptcy petitions presented by a bankrupt with an asset not exceeding $200,000 were managed by ORO. The rest would be contracted out randomly to outside trustees. In some cases, the trustees were appointed by the creditors.

8. Concerning the Scheme, outside trustees could make their own decision as to whether or not to claim the money from the bankrupts and ORO was in no position to give them instructions. Should a creditor feel aggrieved because of the trustee's decision not to claim the money, he/she would have a right to appeal to the Court.

Observations and Comments

9. To "leave wealth with the people" is neither a primary duty of ORO nor a factor ORO should consider in exercising its discretion. The money the Scheme gave out was not purpose-specific. Even if a bankrupt used it to repay a debt, the objective of "leaving wealth with the people" could be regarded as fulfilled.

10. ORO's decision not to claim the money from the bankrupts of all ORO cases was based on a generalised presumption (paragraph 4) and it probably neglected the creditors' right to be apportioned the property in some cases. This could be unfair to them. The fact that no creditors had ever applied to the Court to reverse the decision did not mean that none of them objected to it or had their interests impaired as a result. ORO's duty to consider each bankruptcy case on its own merits had given way to administrative convenience (paragraph 6). This was a deviation from established practices.

11. The complainants' dissatisfaction stemmed from ORO's failure to do what outside trustees would, i.e. to consider the actual circumstances of individual bankrupts before deciding whether or not to claim the money. As a result, bankrupts of all ORO cases were able to keep the $6,000, but those of outside cases (such as the complainants) were subject to the possible claims of their trustees.

Conclusion and Recommendation

12. The ORO decision meant that the treatment bankrupts received depended on whether their cases had been contracted out or not. Bankrupts of outside cases had a slimmer chance of keeping the money than those of ORO cases. ORO's decision also put the interests of some creditors at jeopardy and was, therefore, not appropriate.

13. In the light of the above, The Ombudsman considered this complaint substantiated.

14. As ORO could not renege on its decision made, The Ombudsman would not request a review. Nevertheless, we recommended that should the Government launch similar schemes in the future, ORO must follow the due process and established practices before deciding whether to make a claim or not.

A case of unfairness and deviation from established practices

Securities and Futures Commission ("SFC")

Case No. OMB 2011/1241 –
Licence application
Main allegations: delay in processing and failing to approve an application for personal licence – partially substantiated



Details of Complaint

In January 2009, the complainant, an insurance agent, passed the relevant examinations and applied to SFC to become a licensed representative of his insurance company ("Company A") to carry on Type 1 (dealing in securities) and Type 4 (advising on securities) regulated activities ("RAs"). To his dismay, SFC had not approved his application after more than two years. The complainant alleged that SFC had delayed in processing his licence application.

Licensing Regime

2. Under the Securities and Futures Ordinance ("SFO"), SFC is empowered to license corporations and individuals for carrying on the SFO-defined RAs in Hong Kong. If a licensed corporation ceases its business in RAs, it must notify SFC and its licence will be revoked. This will cause the personal licences held by any licensed representatives of that corporation to be revoked simultaneously, and its employees who have yet to hold any licences to be disqualified from doing so, because individuals cannot be licensed unless the corporation employing them has a licence for the same types of RAs.

3. SFC pointed out that persons whose business was solely concerned with investment-linked assurance schemes or mandatory provident fund schemes were regulated by the Insurance Authority or the Mandatory Provident Fund Schemes Authority ("MPFA") and were not required to hold SFC licences. As such, SFC would not approve their licence applications, so as to avoid misleading their clients into believing that the sale of insurance products fell within SFC's purview. Yet, SFC found it necessary to issue a clarification circular in August 2009 for the insurance industry as there were apparently confusions about the licensing requirements.

Sequence of Events

4. In January 2009, when handling certain licence applications from Company A's staff members, SFC found that Company A did not appear to be conducting Type 1 and Type 4 RAs though it was licensed for such business. In February 2009, SFC requested Company A to clarify the nature of its business activities. Meanwhile, SFC verbally informed Company A that all licence applications from its staff would be put on hold until SFC was satisfied that Company A itself was engaging in RAs. In August, Company A asked for more time to prepare a reply to SFC because it was subject to an MPFA review at that moment.

5. In February 2011, the complainant contacted SFC to enquire about the progress of his application. SFC replied that since it still had doubts about the business nature of Company A, it could not process his licence application and his application fees were not refundable. In March 2011, SFC wrote to Company A again, requesting clarification on whether it was conducting any RAs.

Response from SFC

6. SFC commits in its performance pledges to process any application for a normal representative's licence within eight weeks. This timeframe was

not applicable to the complainant's case due to its complexity, as SFC must first verify whether Company A and its staff were required to hold such licences.

7. As to why the verification had not been completed in more than two years, SFC explained that it would not revoke Company A's licence lightly taking into account the financial implication and inconvenience that might be caused. It might even harm the company's reputation. Therefore, Company A was given sufficient latitude to sort out and restructure its business. During the period, withholding the applications from individual staff was preferred to rejecting them outright. Otherwise, they might need to re-apply and pay the application fees again if Company A could establish the relevant new business subsequently. SFC considered the complainant not prejudiced in any way by such deferral because he seemed to have only conducted insurance business.

8. SFC also asserted that since a licensed corporation had to endorse the licence application forms of its employees to confirm their accuracy, such applications were in fact jointly made by the company and the individuals. Should SFC have any enquiries about the individual applications, it would only contact the licensed corporation directly. The company was thus expected to advise its staff accordingly. Therefore, SFC had not given the complainant any written notification directly until he made an enquiry with it in February 2011.

9. SFC stressed that insurance agents should familiarise themselves with the licensing requirements. If they unnecessarily took examinations in the mistaken belief that they would be entitled to a licence after getting a pass, they must bear their own responsibility. Since 2009, SFC had not only issued a clarification circular to industry participants to reiterate the licensing requirements, but had also dealt with a large number of cases similar to Company A. Considering the limited resources, SFC contended that it was unfair to view the complainant's case in isolation and criticise SFC for delay.

Our Comments

10. We accepted that SFC was apt to exercise caution in processing licence applications where it had doubts. However, in this case, when Company A asked for an extension of time in August 2009 to prepare its reply, SFC did not specify a deadline. Thereafter, no further progress was made for one and a half years, until SFC wrote to Company A again in March 2011. This inevitably created an impression that SFC's follow-up actions were slipshod and inefficient. This might even call into question whether SFC had fully discharged its regulatory duties.

11. SFC considered it sensible and pragmatic not to revoke Company A's licence hastily. In this way, SFC actually exercised discretion to permit an unqualified company and its existing licensed employees to maintain their licences for over two years, defeating its regulatory purpose of protecting the public from being misled. Nevertheless, staff members of the same licensed corporation were not granted the licences despite passing their examinations. The complainant certainly had reason to feel aggrieved and criticise SFC for inconsistency and delay in handling licensing matters.

12. Moreover, SFC's communication with the complainant was far from adequate. In April 2009, it only verbally notified his company of withholding his licence application. It was not until the complainant made an enquiry in February 2011 that SFC gave him a written explanation. Though SFC contended that companies were obliged to inform their own staff of the application status, such arrangement was not mentioned in the relevant laws or the application form. We, therefore, did not accept SFC's shift of the responsibility for informing applicants to their companies.

Conclusion and Recommendations

13. In the light of the above, The Ombudsman considered the complaint partially substantiated.

14. We recommended that SFC draw up guidelines regarding those cases to which its performance pledges would not apply, stipulating the procedures and timeframe for handling such cases (including the time it would take to make enquiries with licensed corporations and individuals and to give them replies). It should also review its current practice of only communicating with licensed corporations about the progress of individual staff members' licence applications.

A case of delay and inadequate communication with the applicant

Social Welfare Department ("SWD")

Case No. OMB 2011/3663 – Higher Old Age Allowance
Allegations: (1) unreasonably using the date that the complainant submitted his Higher Old Age Allowance application as the commencement date of his allowance – unsubstantiated; and (2) giving little publicity to the arrangement that early submission of application for the allowance would be accepted – substantiated



Details of Complaint

The complainant became eligible for Higher Old Age Allowance ("HOAA") the day he turned 70. As it was a public holiday, he waited until the next working day to submit his application. SWD later approved his application and used the date that he submitted his application as the commencement date of his allowance.

2. The complainant considered that his HOAA should have been calculated from the day of his 70th birthday and was, therefore, dissatisfied with SWD's decision to grant his HOAA on the date of receipt of application. Moreover, the complainant pointed out that SWD had given little publicity to the arrangement that early submission of application for the allowance would be accepted.

Our Findings

3. According to SWD's website and the Pamphlet on Social Security Allowance Scheme, HOAA would be granted from the date of receipt of application or the day the applicant became eligible, whichever was later.

4. Moreover, SWD had all along been accepting applications from those who would soon turn 70. The Department, however, did not define what "soon turn 70" meant. Its staff members would normally handle this kind of applications flexibly.

Our Comments and Conclusion

5. SWD had followed its established regulations to calculate the complainant's HOAA from the date it received his application. That was not unreasonable. The problem was that SWD had never made it clear to the public that it would accept early applications from those who would soon turn 70. We considered clear information particularly important to the elderly. The complainant submitted his application after his birthday because he was not aware of this arrangement. Consequently, the commencement of his HOAA was delayed for one day.

6. In view of the above, The Ombudsman considered allegation (1) unsubstantiated and allegation (2) substantiated. Overall, this complaint was partially substantiated.

7. This Office was pleased to note that SWD subsequently issued guidelines to its staff, stating that applicants for the Old Age Allowance could submit their applications within one month before the birthday that they meet the qualifying age. Meanwhile, SWD also revised the Pamphlet on Social Security Allowance Scheme.

A case of failure to provide adequate information to clients

Social Welfare Department ("SWD") and Hospital Authority ("HA")

Case No. OMB 2011/3946A & B – Residential services for the disabled

Allegations:

SWD – shifting responsibility and ignoring the needs of the complainant's disabled daughter in refusing to arrange placement for her in a residential care home – substantiated

HA – shifting responsibility and ignoring the needs of the complainant's disabled daughter in refusing to arrange placement for her in an infirmary – unsubstantiated



Details of Complaint

The complainant's daughter ("Miss A") suffered from congenital muscular dystrophy and was totally dependent on the care of her family members in her daily life. Her cognitive development was normal and she was studying at a special school.

2. In September 2010, Miss A reached the age of 15 and was eligible for SWD's residential services for the mentally or physically handicapped. The school social worker conducted an initial assessment of her condition in October that year and in April 2011 applied to HA on her behalf for the Mental Handicap Infirmary and Rehabilitation ("MHIR") Service. However, HA rejected her application on the grounds that she was not severely mentally handicapped. Later on, the social worker helped her apply for HA's General Infirmary ("GI") Service. However, the application was again rejected because Miss A had to depend on a mechanical ventilator all the time and GI units did not have such equipment.

3. The school social worker then conducted a second assessment of Miss A's condition in July 2011. The result again indicated that she needed HA's infirmary service. However, in view of HA's previous rejection of her similar application, the social worker advised that she apply for SWD's "Care and Attention Home for Severely Disabled Persons" ("C&A/SD") instead. Nevertheless, SWD insisted that she should queue for HA's infirmary service. In the event, the social worker decided not to make any more application for Miss A.

4. The complainant noted that as she and the other family members were getting older, it would be difficult for them to continue to take good care of her daughter, who would soon reach adulthood and was in great need of infirmary or residential care services. However, SWD and HA ignored her plight, shifted the responsibility to each other and refused to arrange residential placement for her.

Services Provided by SWD and HA

5. The rehabilitative residential services provided by SWD are for disabled persons 15 years old or above who cannot live independently or whose family members cannot provide adequate care for them. Of such services, C&A/SD provides the most intensive nursing and personal care. Applicants must first go through assessment by a social worker before they can be waitlisted for the service. However, should they need even more intensive medical care, they should consider HA's infirmary service.

6. The MHIR Service of HA provides an integrated medical care and rehabilitation service for adults with severe or profound mental handicap; while the GI Service is meant for those elderly or disabled with a stable medical condition, but who are bed-ridden or have to rely on other people's assistance in their daily activities such as bathing, toileting, eating and mobility. What they need is frequent attention, not intensive or complicated medical care.

Response from SWD

7. SWD twice advised that Miss A should apply for HA's infirmary service, which was based on her needs as assessed by the social worker. However, its staff had failed to note that for the second assessment, the service Miss A needed (HA's infirmary) did not match the one suggested for her (C&A/SD by SWD) on the application form (paragraph 3). It was not until October 2011 when the case was reported in the media that SWD became aware of HA's previous rejection of Miss A's application.

8. SWD reiterated that Miss A's needs for care and attention exceeded the ambit of C&A/SD.

Response from HA

9. HA considered Miss A not eligible for its MHIR Service because of her normal intelligence, while its GI units are not equipped to take care of patients who have to depend on a mechanical ventilator. Also, such patients were more susceptible to bacterial infection and complications resulting from prolonged hospitalisation.

10. In addition, Miss A did not need immediate hospitalisation as her condition was stable. The complainant was worried that once her daughter reached adulthood, she could not receive medical care comparable to that currently provided by the paediatric and youth ward of a hospital. HA would accordingly devise a medical care plan for Miss A to ensure that she could receive proper care after reaching adulthood. Meanwhile, a medical social worker would be assigned by the hospital to actively cater to her welfare needs.

Our Comments and Conclusions

11. We noted that when handling the second assessment, SWD had failed to notice the social worker's remarks that HA had previously turned down Miss A's application for infirmary service. Such negligence resulted in its repeated suggestion for her to apply for the same service. No wonder the complainant would consider such repeated suggestion an act to shift responsibility. Furthermore, the two assessments of Miss A's condition by the social worker within nine months had reached the same conclusion. SWD, instead of suggesting again that she queue for HA's infirmary service, should have held an in-depth discussion with the social worker to find out the crux of the problem, or even taken the initiative to contact HA with a view to drawing up together a plan for proper residential service for Miss A.

12. In this light, The Ombudsman considered the complaint against SWD substantiated.

13. HA had rejected the applications of Miss A in light of the nature and scope of its existing services. Its decision was not unreasonable from an administrative point of view. The Ombudsman, therefore, considered the complaint against HA unsubstantiated.

Recommendations

14. The Ombudsman made the following recommendations to SWD and HA:

(1) to continue to work closely and hold timely discussions to devise an appropriate long-term care plan (which should include residential arrangements) for Miss A;

(2) to establish a mechanism for deliberations and coordination to flexibly cater to the residential needs of patients who are not covered by the existing services because of their special conditions; and

(3) SWD to remind staff to examine and handle carefully the assessment forms received. If in doubt, they should approach the social workers as soon as possible for clarification.

A case of negligence and inadequate coordination

Transport Department ("TD")

Case No. OMB 2010/5125 –
Speed display device
Allegation: failing to proactively follow up a complaint against a minibus that continued to run on the road with a defective speed display device – substantiated



Details of Complaint

In late October 2010, the complainant boarded a green minibus and noticed that its speed display device ("SDD") was covered by a sheet of paper, on which a Chinese character meaning "out of order"

was written. He reported the matter to the 1823 Call Centre ("Call Centre") and requested TD to follow up.

2. After nearly four weeks, the complainant happened to take the same minibus (with the same registration mark and driver) and found that the SDD was still covered. Dissatisfied with the tardiness of TD in following up the matter, he contacted the Call Centre again and lodged a complaint with this Office.

Legal Provisions

3. With effect from 1 May 2008, it is mandatory for all public light buses to be fitted with an SDD, which shall also be maintained in good working order and kept free from any obstruction for easy reading by passengers. Any person using a vehicle on the road which does not comply with the provisions commits an offence and is liable to a fine of $10,000 and imprisonment for six months.

TD's Follow-up Action

4. After receiving the report of the complainant through the Call Centre, TD called the minibus operator in early November, requesting the latter to investigate the matter, repair the SDD as soon as possible and instruct the driver not to tamper with the SDD.

5. In its first reply to TD, the operator reported that inspection by a repair service company was arranged on 10 November. It was found that the SDD kept flashing because of a faulty cable, but the repair work had to be deferred to 20 November as the technician had not brought a spare cable. Afterwards, the operator reported to TD again that, after replacing the cable, another defect was identified which required another week for ordering a necessary spare part from the original manufacturer. Finally, all the repairs were completed on 30 November.

6. TD explained that, since the SDD could not function on its own, it must be delivered together with the minibus to a garage for maintenance and repairs. So, the minibus in question should not be available for deployment during the period. By requesting the operator to repair the SDD, TD was effectively also requesting it to withdraw the minibus from service. Besides, minibus operators had the duty to comply with legal requirements. TD should not need to remind them individually every time.

7. In fact, the operator informed TD that it had instructed the minibus to stop service after being notified of the defective SDD by the driver. However, due to some internal miscommunication and in order to maintain the service level of the route, the minibus in question remained in service.

Improvement Measures by TD

8. In this incident, TD had cautioned the operator and put a remark in its evaluation report. Should the operator commit the same contravention again, TD would consider such punitive measures as issuing a warning letter and suspension of operating licence. To expedite repairs, TD had also recommended that the operator keep a stock of spare parts and SDDs. The operator accepted the recommendation.

9. In April 2011, TD issued two sets of guidelines standardising the actions to be taken by staff and the timeframe in handling complaints concerning SDDs on red and green minibuses. According to the guidelines, upon receipt of a complaint, staff must request on the same day the vehicle owner or the operator to repair the SDD and to stop immediately the deployment of the minibus in question.

Our Comments

10. Although TD was twice informed by the operator that repair work remained outstanding, it failed to remind the latter to stop using the minibus immediately on both occasions. Even after receiving through the Call Centre the complainant's report in late November that the minibus concerned was still in service, TD did not take vigorous measures to rectify the situation. The way TD handling the matter was unacceptably lax.

11. TD had presumed that the minibus would be unavailable for deployment during the time of repairs. Nonetheless, as it was reported that the technician had not brought a spare cable, apparently the minibus was not sent to a garage for inspection. Since the SDD was not a component essential for the operation of a vehicle, it was possible that the minibus with an SDD waiting for repair continued to run on the road, although that would be against the law. TD's argument that a request for repairs was effectively the same as a request for withdrawing the minibus from service was hardly convincing.

Conclusion and Recommendations

12. TD condoned the repeated delay of the operator in carrying out repair and never checked whether the minibus in question had been put out of service. Instead, TD relied on the operator to voluntarily comply with the law. It was only after the commencement of our inquiry that TD drew up the relevant guidelines.

13. The Ombudsman, therefore, considered the complaint substantiated.

14. The Ombudsman recommended that TD:

(1) remind its staff to reply to complainants in a timely and comprehensive manner;

(2) review periodically its effectiveness in handling complaints concerning SDDs; and

(3) advise all public light bus operators to adopt the practice of keeping a stock of spare parts and SDDs.

A case of laxity in actions

Water Supplies Department ("WSD")

Case No. OMB 2011/0098 –
Dispute over water charges
Main allegations: (1) failing to initiate follow-up action when an anomalous water meter reading was observed – substantiated; and (2) acting arbitrarily in estimating the complainant's water consumption – substantiated



Details of Complaint

The complainant's water bills used to be only around $20. A few months after moving into her new flat, however, she received a water bill demanding more than $400. She called the WSD hotline to enquire. The staff explained that the reading recorded by the meter reader was lower than the final reading estimated by WSD for the former registered consumer. Therefore, WSD had estimated her water consumption based on the consumption records of the former consumer. The complainant was dissatisfied that WSD did not initiate follow-up action when it noticed the anomalous meter reading. Instead, it just arbitrarily estimated her water consumption.

Course of Events

2. At the end of July 2010, the water meter reading as recorded by WSD for the flat in question was 209. On 2 August, the former registered consumer of the meter applied to WSD for immediate closure of his water account. WSD, based on his consumption history, estimated the meter reading to be 241 on that day. This estimated final reading then became the initial reading of the water meter when the complainant applied to take up the consumership on the same day.

3. At the end of November, a water meter reading of 232 was recorded for the complainant's flat during a routine meter reading. As it was lower than the initial reading of 241, WSD treated it as an anomalous negative reading which would not be used to calculate the water bill. Instead, WSD made an estimate of her water consumption from early August to mid-November based on the water consumption history of consumers in the same category as the complainant. A water bill of more than $400 was issued to her subsequently in early December.

4. On 10 December, the complainant called the WSD hotline. The staff told her that the estimate for her water consumption was based on that of the former registered consumer. However, WSD would arrange for a special meter reading at her flat and issue a new water bill upon completion of an investigation. Three days later, she called the hotline again and was told that her case had been referred to the Customer Accounts Section for follow up. At the end of December, WSD's computer system issued

a works order, requesting a special meter reading at her flat.

5. On 6 January 2011, a special meter reading was conducted and a reading of 241 recorded. On 11 January, WSD wrote to the complainant, informing her that the initial reading of her water meter had been re-estimated and the water charges from early August 2010 to early January 2011 was $56 after adjustment.

Response from WSD

Allegation (1) – No follow-up action on recording an anomalous reading

6. When an anomalous negative reading such as the one described in paragraph 3 above is observed at an initial meter reading, WSD's computer system will automatically estimate a meter reading according to the category to which the new registered consumer belongs. It will then calculate the amount of water consumption and issue the first water bill. The new consumer can raise an objection to the department on the estimated charges. If warranted, WSD will arrange for a special meter reading and use the actual reading as the basis to re-estimate the initial reading and adjust the water bill.

7. WSD received the water charge dispute raised by the complainant on 10 December and arranged a special meter reading on 6 January the following year. Both the initial reading and the water bill were adjusted afterwards. The department had, therefore, followed up the complainant's case properly.

Allegation (2) – Arbitrary estimation of water consumption

8. The former registered consumer, instead of giving WSD 14 days' notice with regard to termination of water supply as required by law, applied for immediate closure of his water account on 2 August. Consequently, WSD could not arrange to take a final reading on that day. While a meter reading had been conducted on 29 July, the water bill was not yet issued. WSD, therefore, had to estimate his water consumption for the period till 2 August based on the average daily consumption in the same period the previous year. Eventually, the final reading was estimated at 241.

9. The complainant took up the account on 2 August but a negative reading was noticed by the meter reader upon the initial reading at the end of November (paragraph 3). Without past consumption records, WSD's computer system had to resort to estimation to determine her water consumption (paragraph 6). Should the actual meter reading recorded at a later time prove that the estimate was too high or too low, it would be rectified to ensure that the consumer would not be overcharged. So, WSD was not arbitrary in estimating her water consumption.

10. The complainant telephoned WSD twice in early December and the computer system issued a works order for special meter reading only in late December. That was because WSD needed time to observe her water consumption pattern.

Our Observations and Comments

Allegation (1)

11. Whether WSD will proactively follow up a case after it has issued a water bill to a new consumer based on an estimated consumption depends on the reaction of the consumer. If the consumer raises an objection, the department will review the case. Otherwise, it will wait until the next routine meter reading (i.e. four months later). Follow-up action will only be taken if a negative reading is recorded again. However, the problem will have dragged on for eight months by then.

12. In this particular case, WSD was aware of the anomaly after the meter reading at the end of November (paragraph 3). However, it arranged for a special reading and adjusted the water bill only after the complainant raised an objection in December. Therefore, while WSD handled the case in accordance with established procedures, it failed to follow up the case proactively.

Allegation (2)

13. It was indeed unreasonable for WSD to have estimated the final reading for the former consumer based on his water consumption during the same period the previous year (from late March to early August) and used it as the initial reading of the complainant's water meter. The former account was closed on 2 August, just four days after the routine meter reading done on 29 July. WSD could have estimated only the water consumption on these four days and added it to the actual consumption of the previous 128 days (late March to 29 July) to arrive at an approximate consumption for that period. Estimation for the whole period was simply unnecessary. Besides, WSD's estimate was gravely inaccurate. The actual meter reading of the complainant's meter at the end of November was only 232, which was even lower than the originally estimated final reading of 241 on 2 August (nearly four months ago).

14. Furthermore, the first water bill issued to the complainant exceeded $400, more than seven times the adjusted bill of $56 following the special meter reading. This inevitably gave the complainant an impression that WSD was arbitrarily estimating her water charges.

Other Observations

15. The WSD hotline staff provided incorrect information to the complainant on 10 December when he said that her water consumption was estimated on the basis of the past consumption of the former registered consumer (paragraphs 1 and 4). This was indeed improper.

Conclusion and Recommendations

16. WSD failed to take the initiative to follow up the problem and was gravely inaccurate in estimating the complainant's water consumption and the water charges. This was unfair to the complainant. Overall, The Ombudsman considered this complaint substantiated.

17. The Ombudsman recommended that WSD:

(1) revise its procedures in processing the closure of water accounts. Regardless of the length of notification given by a registered consumer; a special meter reading should be arranged as soon as possible;

(2) complete as quickly as possible the study on revising the computer program such that procedures for handling negative meter readings can be improved; and

(3) remind hotline staff that information provided in response to public enquiries must be accurate and correct. In case an immediate answer is not available, information should be checked before reply.

A case of faulty procedures and wrong estimation



Annex 9

Summaries of Selected Cases Concluded by Inquiry

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2011/0782 –
Claim for damages
Allegation: delay for almost one year in demanding compensation from the complainant for damages in an accident



Details of Complaint

In March 2010, when entering the car park of a market under FEHD, the complainant's car accidentally damaged the dropbar system at the entrance. The complainant gave his contact information to the staff in the market and left. However, it was not until February 2011 that he received from FEHD a demand note of $20,000 for the damage caused.

2. The complainant was dissatisfied that FEHD had failed to contact him in the interim. As a result, he had not been able to file a report with his insurer.

Response from FEHD

3. Between the accident and issuance of the demand note, FEHD had taken a series of steps, which included contacting the department concerned to assess the damage, requesting the department to prepare quotations for the repair works, discussing with it the repair arrangements and eventually testing and accepting the new system. Those steps took time.

Our Comments

4. We considered that the complainant should have expected a possible claim from FEHD for compensation as he had indeed damaged the dropbar system. However, FEHD should also have sent him a written notification of possible claim as soon as practicable. There was indeed inadequacy on the part of FEHD, which did not contact the complainant until after the installation of the new system.

5. We suggested that FEHD learn from the incident and improve its work procedures. Subsequently, FEHD instructed staff to issue a written notification of possible claim within one week of any such accident in future.

A case of inadequacy in procedures

Hospital Authority ("HA")

Case No. OMB 2011/2357 –
Pregnancy report
Allegation: refusal for no reason by a public hospital to accept pregnancy reports issued by registered Chinese medicine practitioners for antenatal booking at the maternity clinic



Details of Complaint

The complainant, a registered Chinese medicine practitioner ("CMP"), alleged that an HA hospital changed its practice for no reason and stopped accepting pregnancy reports issued by registered CMPs for antenatal booking at its maternity clinic. She considered this to amount to discrimination against CMPs.

HA's Response

2. HA clarified that the hospital in question had always accepted pregnancy reports issued by registered CMPs. However, the frontline staff and staff at the maternity clinic who answered the calls gave incorrect replies to the complainant only because they were unfamiliar with the registration formalities.

3. The hospital subsequently revised its internal guidelines to state clearly that pregnancy reports issued by registered CMPs are to be accepted as documentary proof of pregnancy for new antenatal booking.

Our Comments

4. It was indeed undesirable that the staff members at the hospital provided incorrect advice time and again. The hospital had apologised to the complainant. Our officer called the hospital several times afterwards as a member of the public and confirmed that its staff no longer provided incorrect information to enquirers.

A case of wrong advice by staff

Transport Department ("TD")

Case No. OMB 2011/1106 –
Bus route changes
Allegation: failing to keep its promise to include proposed changes of certain bus routes in a consultation paper



Details of Complaint

The complainant lived in Islands District. She had contacted TD regarding certain proposed changes to some bus routes running through a certain location and enquired whether the residents of Islands District would also be consulted. TD had replied that the proposed changes would be included in the consultation paper on the bus route development programme for the Islands District Council ("IDC") but subsequently failed to keep the promise.

Response from TD

2. According to TD's internal guidelines, whenever there is any proposed change of bus routes, the Department would consult the Traffic and Transport Committee ("T&T Committee") of the District Councils of those districts covered by the affected bus route development programmes. Under the current arrangement, TD will consult the T&T Committees of the District Councils of all districts where the termini and midway stops of the bus routes are located.

3. Although Islands District was not covered by the bus routes concerned, the residents there might need to take the buses on these routes when they came to the location in question. Therefore, the route changes could affect them. Upon request of the T&T Committee of IDC, TD had promised to consult IDC in the exercise. Nevertheless, when later arranging the consultation, TD staff forgot about the promise to include the proposed route changes in the relevant consultation paper for IDC. TD deeply regretted this omission.

4. TD subsequently consulted the T&T Committee via the IDC Secretariat. The Department also reminded its staff members to take into consideration the impact of the relevant bus route development programmes on the residents of Islands District as well as to consult the T&T Committee of IDC.

Our Comments

5. We considered this a case of gross negligence. TD made its promise when replying to the complainant's enquiry about the consultation. However, the Department forgot about the promise when it later started the consultation exercise. We recommended that TD consider including this kind of request in its relevant internal guidelines so that its staff members can follow up as appropriate.

A case of negligence

Annex 10

Examples of Improvement Measures Introduced by Organisations Following Our Inquiry or Investigation

(a) Guidelines for clarity, consistency or efficiency in operation	
Organisation* (Case reference)	**Administrative Enhancement**
AFCD (2009/1818)	Guidelines drawn up for handling dog bite cases and reclaiming of microchipped dog by dog owners to minimise delay in initiating prosecution
BD (2010/4441)	Internal guidelines on handling of unauthorised signboards revised so that newly installed unauthorised signboards are also accorded with priority for clearance, in line with the existing enforcement policy against unauthorised building works
CC (2010/3421)	Clearer internal guidelines devised for delineating complaints outside jurisdiction
FSD (2009/1811)	Operation Manual amended to ensure that all obstetric patients, whether local or from across the borders, requesting ambulance are to be delivered to hospitals in accordance with laid down guidelines rather than to hospitals designated by the patient
HAD (2008/3128)	Internal guidelines on rates exemption revised to include squatters with Squatter Control numbers
Imm D (2010/2290)	Guidelines drawn up setting out clearly the procedures for processing applications for changing names by persons born overseas and holding foreign passports to ensure eligibility
IRD (2010/1289)	Computer system enhanced so that the automatic tax recovery process can be suspended upon staff's instruction to avoid inappropriate machine-generated letters being issued
LCSD (2009/3143)	Guidelines for booking non-fee-charging facilities revised to ensure fairer allocation of such facilities between groups and individuals during peak hours
LCSD (2010/2376)	Operational Manual revised stating clearly the conditions and criteria for selecting suitable back issues for lending
LCSD (2010/2839)	Guidelines on placing publicity materials at public libraries by outside organisations revised and circulated to ensure consistency in deciding whether or not requests for such should be entertained
LCSD (2010/3572)	Circular revised giving clearer instruction to staff to ensure consistency in processing applications from non-hirers of LCSD leisure facilities for posting posters and publicity materials in LCSD venues
ORO (2011/1016)	Guidelines issued to ensure thorough searching of information through the bankruptcy information system and periodical reviews conducted to monitor the effectiveness of the new guidelines

* see Table 4 for the full name of the organisation against the acronym.

SFAA (2010/4670)	Continuing Education Fund Guidance Notes revised to reflect that the applicant's fund account will be closed after the fourth submission of claim has been made, irrespective of whether the claim is approved or not, in line with SFAA's policy
WSD (2010/0119)	Time limit set for handling a meter misplacement case and tighter control exercised on meter installation and replacement works by contractors
WSD (2011/0757)	Internal guidelines revised to include the checking of land status as a regular procedure in vetting water supply applications

(b) Better arrangements for inter-departmental coordination

Organisation* (Case reference)	Administrative Enhancement
BD (2010/5160)	Measures introduced to prevent missing files in file transfers between FEHD and BD, by recording file transfer movements and case progress and increasing manpower of the Joint Office for handling seepage complaints
HAD (2008/2229)	Procedures for processing applications for rates exemption streamlined by enquiring of all relevant departments in one go and arranging meetings with them where necessary
1823 Call Centre - EU (2010/1847)	Complaint handling work flow reviewed and the relevant guidelines revised to ensure calls from a complainant at different times on a same matter are processed in a connected manner to avoid delay and inconsistency in handling
TD (2008/4632)	Procedures laid down for coordination with other relevant departments to take joint enforcement actions against illegal parking of bicycles at public transport interchanges

(c) Measures for better public enquiry/complaint handling

Organisation* (Case reference)	Administrative Enhancement
CR (2009/1768)	Checklist issued to give step-by-step guidance to staff in following up complaints and internal monitoring mechanism strengthened to ensure that all public complaints are properly handled
EAA (2011/2599)	Transparency in disciplinary inquiries enhanced by allowing disclosure of reasons of the Disciplinary Committee's judgements upon written request from the complainants
GS - EDB (2010/3719)	Meaning of "anonymous complaints" redefined so that cases will be pursued even where the complainant refuses to provide a mailing address or an email address with e-certification
HD (2010/0069)	Monitoring of estate management contractors' handling of insurance claims strengthened by requiring the contractors to submit monthly reports on all outstanding insurance claims and by holding regular meetings of the claims review sub-group to monitor claims handling

* see Table 4 for the full name of the organisation against the acronym.

LD (2007/4346)	Guidelines for complaint handling revised to specify that the officer under complain should not be assigned to investigate the complaint
LAD (2010/1559)	Internal guidelines issued to remind handling officers that, in addition to verbal explanations for refusal of legal aid, consideration should be given to providing also written explanations to applicants who are unable to attend LAD offices for an interview or cannot be contacted by telephone
Lands D (2011/1413)	Arrangement put in place for issuing documents in the recipients' working language (Chinese or English) or to issue bilingual documents
PCPD (2009/5366)	Telephone complaint service introduced

(d) Measures for better services

Organisation* (Case reference)	**Administrative Enhancement**
HA (2009/4513)	Procedures put in place to call up patients who failed to turn up on a revised medical appointment date
HD (2010/1725)	Guidelines issued allowing frontline staff to exercise discretion to deduct the amount of rates concession from the intake rent if new tenants have financial difficulty
HAD (2008/1735)	Procedures laid down for posting up in the village concerned notices of land right succession to give the villagers an opportunity to raise objection
HAD (2010/5797)	Time frame set for processing rate exemption applications
LCSD (2009/3559)	Guidelines drawn up for handling applications for leave from part-time course instructors to avoid adverse effect on coaching due to prolonged absence of instructors
LCSD (2009/3118)	Notices put up at free soccer pitches to keep the public informed of the booking arrangements and check-in procedures for such facilities
SWD (2010/5312)	Procedures enhanced for communicating with case workers in connection with applications for care and attention home service to avoid termination of an application by mistake

* see Table 4 for the full name of the organisation against the acronym.

(e) Measures for more effective regulation or control	
Organisation* (Case reference)	**Administrative Enhancement**
Arch SD (2010/0913)	Site inspection procedures for checking banner information displayed by works contractors enhanced to ensure that the information is up to date
GS - EDB (2009/2022)	Monitoring of registration of Direct Subsidy Schools enhanced by raising the approval level for extension of provisional registration of schools not yet given full registration after one or two years
FEHD (2011/0657)	Enforcement action against shop extension of a food shop strengthened by conducting more blitz operations during the food shop's peak business hours and reflecting to the court the food shop's repeated offences and extent of illegal extension for the court to consider more stringent penalty
Lands D (2011/3749)	Clear instructions issued for imposing specific deadlines for compliance in identified cases of breach of land lease conditions and timely follow-up
TD (2010/5125)	Operators of green minibuses found to have malfunctioning speed display devices reminded to stop the minibuses from running on the road for repair immediately and to acquire spare display device and parts to expedite repair work

(f) Clearer and more reasonable rules	
Organisation* (Case reference)	**Administrative Enhancement**
EPD (2011/1723)	Objective criteria laid down after consultation and new criteria publicised for approving applications for Quality Powered Mechanical Equipment labels for greater transparency
Lands D (2011/3721)	A land lease condition to be included in future land grants stipulating unconditional permission for public access where such requirement is deemed necessary

(g) Clearer and more timely information to the public	
Organisation* (Case reference)	**Administrative Enhancement**
HD (2010/5788)	Arrangement put in place for coordinating the annual review exercise of the rental rates of commercial car parking spaces and ensuring timely notification of parking space tenants of the revised rates
HD (2011/0065)	Appeal channels spelt out in the letter notifying the tenant of the demerit points recorded to keep him informed of his right to appeal
HD (2011/1216)	Existing arrangement changed so that PRH applicants are informed in advance when a PRH unit with adverse environmental indicators is allocated, with promotion of the positive factors of such units introduced stepped up in tandem

* see Table 4 for the full name of the organisation against the acronym.

HKHS (2010/5752 & 2010/5753)	Clearer information and explanation given to residents regarding HKHS's arrangement of subsidy for the management fee of a housing estate under the Senior Citizen Residences Scheme and the relevant information booklet revised with a clear indication of HKHS's responsibility for operational profit and loss
Imm D (2010/2283)	Notices posted at immigration counters and on its website to draw the attention of Mainland travellers to their option to produce their Exit-entry Permit or their Chinese passport in accordance with their purpose of visit, so as to avoid an inappropriate permitted length of stay in Hong Kong being approved
Imm D (2011/1586)	Message added in the relevant interactive voice response message of the Imm D enquiry hotline and the Imm D website on the circumstances where application for a re-entry permit is not required to avoid unnecessary applications
LCSD (2009/2183)	Information on the arrangement of a gun shooting centre for opening sessions to the public promulgated through banners, retractable stands and the website of the organisation operating the centre
LCSD (2011/0376)	Procedures laid down for (i) posting up of notices at least one month before the Lunar New Year holidays at the booking counter of LCSD sports centres and in fitness rooms to alert users on the closure of the facility during the holidays and that no compensation or extension of the validity of the Monthly Ticket will be arranged for such closure and (ii) drawing the attention of the Monthly Ticket purchasers to this before their payment for the ticket
LCSD (2011/0756)	Notice to visitors revised to give clearer guidelines regarding acceptable costumes in visiting a garden to avoid disputes between visitors and Garden workers
WSD (2009/2579)	Water bill format enhanced to give clearer messages to the consumer regarding the amount of water charge overdue and the requirement for immediate payment to avoid disconnection of water supply

(h) Training for staff

Organisation* (Case reference)	**Administrative Enhancement**
HD (2010/2586)	Training for frontline staff strengthened on handling applications for public rental housing transfer
IRD (2010/1289)	Induction training and annual refresher courses organised for new and serving staff in IRD's Collection Enforcement Section to enhance their understanding of the tax recovery process and the related computer system so as to avoid issuing of inappropriate computer-generated correspondence

* see Table 4 for the full name of the organisation against the acronym.


PAK SHING REAL ESTATE CO.
歡迎委托 業主免佣
買賣租售 樓宇按揭
TEL:5725767
KFC
FISHING SHOP
sasa
莎莎
KFC

Annex 11

Summary of Selected Case on Code on Access to Information

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

Lands Department ("Lands D")

Case No. OMB 2011/3562(I) –
Provision of information
Allegation: refusing to provide in the form of a compact disc plans showing the designated spots for display of banners



Details of Complaint

In July 2011, the complainant asked Lands D for information about the designated spots for display of banners in two districts. Lands D agreed to provide hard copies of the existing records held by its two District Lands Offices (totalling 187 pages of A4-size plans). However, it refused to scan and digitise the plans and save them on a compact disc for the complainant, even though the complainant had agreed to bear the costs.

Lands D's Explanation

2. Lands D explained that under the Code on Access to Information ("the Code")[1], it was not obliged to scan and digitise the plans and save them on a compact disc for the complainant. As a matter of fact, it had suggested the alternative of the complainant visiting the district lands offices to take photographs or otherwise make copies of the plans himself free of charge.

Our Comments and Suggestions

3. We accepted that Lands D's decision did not contravene the Code. It had also responded to the complainant's concern for environmental protection by suggesting an alternative which would save paper.

4. Nevertheless, with the advance of technology, photocopiers with scanner function are very common in offices nowadays. We believe that it should not involve too much work for Lands D to accommodate the complainant's request. For convenience to the public and environmental protection, Lands D should consider the complainant's request more positively.

5. This Office also suggested that the Constitutional and Mainland Affairs Bureau, the policy bureau responsible for overseeing the implementation of the Code, take reference from this case and consider directing all Government departments and relevant public organisations to provide information in the form of compact discs upon request.

A case of not being abreast of the times

[1] According to paragraphs 1.13 and 1.14 of the Code, information will be provided in the form in which it exists as far as possible, and Government departments are not obliged to create a record which does not exist.

Annex 12

Index of Reviews by Full Investigation

Complaint	Department	Original overall conclusion	Decision varied/ upheld after review	Overall conclusion after review	No. of recom-mendations
Case No. 2009/1981 Failing to take stringent enforcement actions against obstruction of pavement by the illegal extension of a newsstand	FEHD	Inquiry - No evidence of malad-ministration	Varied	Substantiated	3
Case No. 2006/3082 Impropriety in processing an application under the Patent Application Grant Scheme (Complaint points in Note 1)	GS-CEDB	Full investigation - Partially substantiated	Varied	Partially substantiated (on complaint points not covered in the original investigation)	9
Case No. 2010/1054 Mishandling a complaint against a case chemist (Complaint points in Note 2)	Govt Lab	Inquiry - Partially substantiated	Upheld (The review was on complaint point (1) only)	Un-substantiated	0

Note 1. Complaint points of case no. 2006/3082

(1) Failing to inform the patent office of the criteria for assessing patentability of the complainant's invention (unsubstantiated);

(2) Insisting on using a questionable patent search report as basis for seeking third-party advice on the patentability of the invention (unsubstantiated);

(3) Failing to inform the complainant of the true criteria for assessing applications for the Patent Application Grant (partially substantiated);

(4) Asking the complainant for feedback on a patent search report which did not contain the examiner's comments (partially substantiated);

(5) Unclear charging policy for the patent search-cum-technical assessment and insufficiency in the materials for applicants to inform them of the different charges (substantiated);

(6) Failing to seek consent from the complainant before incurring expenses (partially substantiated);

(7) Requesting the complainant to pay for third-party patentability advice when he had already deposited enough money in his account for the service (substantiated other than alleged);

(8) Delay in seeking third-party patentability advice (partially substantiated);

(9) Failing to inform the complainant of the assessment criteria in respect of third-party patentability advice (partially substantiated);

(10) Impropriety in making an offer to the complainant to waive the search fee charged by the patent office (partially substantiated);

(11) Disallowing the complainant to choose the attorney for third-party patentability advice (partially substantiated);

(12) Lack of measures to control the validity and quality of patent search reports (partially substantiated);

(13) Choosing a patent office which was disadvantageous to the complainant's application (substantiated); and

(14) Lack of the necessary professional qualifications to handle matters relating to patent applications and the patent law (unsubstantiated)

Note 2. Complaint points of case no. 2010/1054

(1) Negligence on the part of the case chemist when preparing his witness statement (unsubstantiated);

(2) Refusing to disclose whether there had been any investigation into the complainant's allegation against the case chemist (partially substantiated);

(3) Unreasonably rejecting the complainant's request for a re-assessment of the case (partially substantiated); and

(4) Lacking a mechanism to ensure the quality of its chemists' assessment work (unsubstantiated)

Annex 13

Summary of Selected Review by Full Investigation

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2009/1981 –
Street obstruction by newsstand
Allegation: failing to take stringent enforcement actions against obstruction of pavement by the illegal extension of a newsstand – substantiated



Details of Complaint

The complainant, owner of a commercial building in a busy street, had repeatedly complained to FEHD since December 2008 that the newsstand facing the street-level shop of the building had been persistently operating beyond the pitch area stipulated in its licence, thus seriously obstructing the pedestrian passageway. The complainant was dissatisfied that FEHD had failed to take effective enforcement actions to rectify the situation.

Outcome of First Inquiry

2. On completion of our first inquiry in November 2009, this Office found FEHD's actions insufficient to deter the newspaper vendor from repeated violations of the licence condition. We urged FEHD to take stricter enforcement actions against the recalcitrant operator.

Complainant's Request for Review

3. In April 2010, the complainant alleged that FEHD had failed to take thorough enforcement actions against the extension of fixed structures of the newsstand, including its canopy, tolerating its persistent unlawful expansion of operating area. The complainant sought a review of the case.

Outcome of Review

4. We reviewed this case by full investigation and found that between 2008 and February 2011, FEHD had instituted over 30 prosecutions against the newsstand for hawking outside its authorised area and causing obstruction in a public place. However, before our review, FEHD indeed had never instituted prosecutions against the illegal extension of the canopy and other installations of the newsstand, nor had it ordered the licensee to remove them. Moreover, FEHD indicated that under its current hawker policy and licence conditions, it would not cancel the licence of a newsstand on the grounds that its fixed structures or hawking area extended beyond the specified boundaries. We considered FEHD's enforcement actions clearly inadequate.

5. In this light, The Ombudsman considered the complaint substantiated.

Recommendations

6. The Ombudsman urged FEHD to:

(1) strictly prohibit any illegal extension of fixed structures of newsstands and order the immediate removal of any unauthorised structures; and

(2) step up inspections of newsstands and institute prosecution promptly against any hawking activities outside the authorised areas.

7. It is our view that given the specification of the area of the pitch in the newsstand licence, FEHD should not freely relinquish part of its enforcement powers in favour of a recalcitrant offender. This Office recommended that FEHD seriously consider revising its policy. Should the unauthorised extension of the fixed structures of a newsstand persist or the operator continue to hawk outside the authorised area despite multiple warnings or prosecutions, FEHD should cancel the licence, where appropriate, as deterrence to others.

A case of inadequate enforcement actions

Annex 14

Achievement of Performance Pledges

(1 April 2011 to 31 March 2012)

(A) Enquiries*

	Response Time		
By telephone or in person	**Immediate**	**Within 30 minutes**	**More than 30 minutes**
	12,345 (100%)	0	0
In writing	**Within 5 working days**	**Within 6-10 working days**	**More than 10 working days**
	156 (78%)	44 (22%)	0

* Excluding enquiries on existing complaints.

(B) Complaints**

	Response Time		
Initial assessment / acknowledgement	**Within 5 working days (target: not less than 80%)**	**Within 6-10 working days (target: not more than 20%)**	**More than 10 working days**
	4,482 (99.4%)	24 (0.5%)	4 (0.1%)

** Excluding cases where acknowledgement is not necessary or practicable.

	Cases outside jurisdiction or under restriction			Other cases		
Cases concluded	**Within 10 working days (target: not less than 70%)**	**Within 11-15 working days (target: not more than 30%)**	**More than 15 working days**	**Less than 3 months (target: not less than 60%)**	**Within 3-6 months (target: not more than 40%)**	**More than 6 months**
	1,039 (89.2%)	108 (9.3%)	18 (1.5%)	3,228 (79.3%)	805 (19.8%)	39 (1%)

(C) Outreach talks

	Response Time	
Requests for outreach talks	**Within 10 working days**	**More than 10 working days**
	17 (100%)	0

Annex 15

Complaintants Charter

We endeavour to provide a high standard of service to the public. In fully discharging our duties, this Office has drawn up the following Charter:

Our Commitment

- Handle complaints in a professional, impartial and efficient manner
- Keep complainants informed of the progress and outcome of our inquiries
- Explain our decisions clearly
- Protect complainants' privacy
- Treat the public with courtesy and respect

Complainants not satisfied with our findings may write to this Office and state the grounds for a review of their cases. Any views on individual staff or our services may be directed to the Chief Manager of this Office. We will take follow-up action with professionalism and fairness.

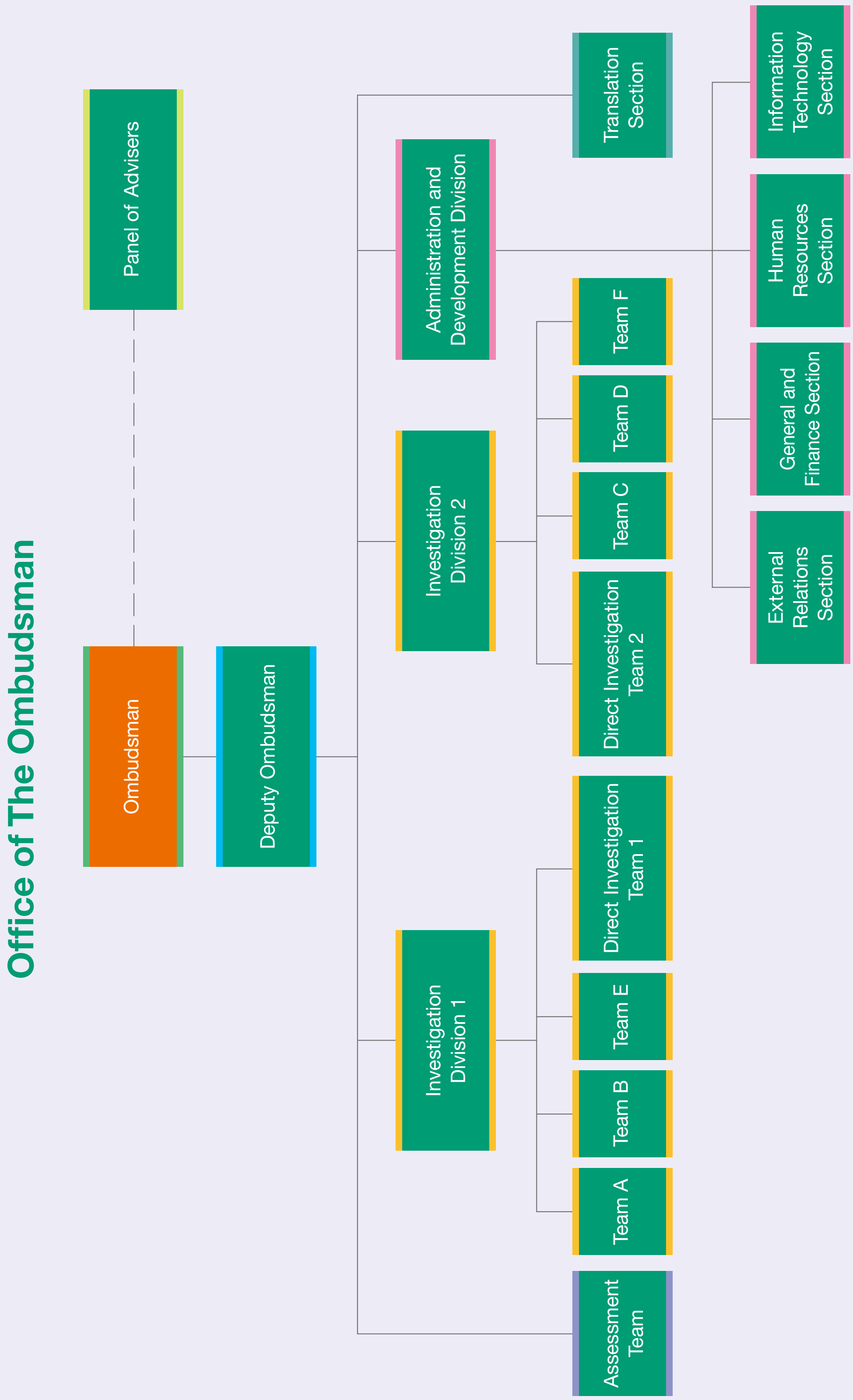
Complainants' Responsibilities

- State clearly the issues of complaint
- Provide true and accurate information in a timely way
- Cooperate in our inquiries
- Lodge complaints in a reasonable manner
- Treat the staff with courtesy and respect

If complainants are not cooperative, the progress and/or outcome of our inquiries may be affected. In such circumstances, we will take proper actions as appropriate, such as making our decision on the basis of available evidence or terminating the inquiry.

Annex 16

Organisation Chart



Annex 17

Panel of Advisers

Building Surveying

Mr Chan Yuk Ming, Raymond

Correctional and Rehabilitation Services

Mr Ng Wang Tsang, Andy

Engineering

Dr Chan Ka Ching, Andrew

Dr Ho Chung Tai, Raymond

Mr Leung Kwong Ho, Edmund

Mr Tse Kam Chuen, Vincent

Legal

Mrs Anne R Carver

Professor Johannes M M Chan

Professor M J A Cooray

Mr Robert G Kotewall

Mr Tai Yiu Ting, Benny

Professor Wang Gui Guo

Medical

Professor Lai Kar Neng

Professor Felice Lieh-Mak

Professor Grace Tang

Dr Wong Chung Kwong

Nursing

Professor Chien Wai Tong

Social Work

Professor Chan Lai Wan

Professor Ma Lai Chong, Joyce

Traffic Engineering

Dr Hung Wing Tat

* In alphabetical order

Annex 18

Visits to the Office of The Ombudsman

Date	Visitors
7 April 2011	Delegates from the Office of the Prime Minister and the Council of Ministers, Nepal
13 April 2011	Delegates from the Directorate on Corruption and Economic Crime, Republic of Botswana
11 May 2011	Scholars from Mainland China, organised by the Asian Legal Resource Centre
26 May 2011	Delegates from the Shenzhen Municipal Supervision Bureau, organised by the Independent Commission Against Corruption
27 May 2011	Participants of the Training Course on Anti-corruption and Construction and Risk Management for officials from Ningpo, organised by the Hong Kong Financial Services Institute
31 May 2011	Participants of the Training Course on Administrative Enforcement and Supervision for officials from the Department of Supervision, Shandong Province, organised by the China Business Centre, Hong Kong Polytechnic University
10 June 2011	Participants of the Training Scheme in Common Law for Mainland Legal Officials 2010/11, organised by the Department of Justice
11 July 2011	Participants of the Training Course on Anti-corruption and Development for judicial officials from Fujian Province, organised by the Hong Kong Financial Services Institute
3 August 2011	Law students from Mainland China and Hong Kong, organised by the Legal Education Trust Fund
1 September 2011	Participants of the Training Course on Building an Incorruptible Civil Service for cadres of supervision from Sichuan Province, organised by the Hong Kong Financial Services Institute
14 September 2011	Delegates from the Shunde District Social Construction and Innovative Management Committee, organised by the Hong Kong Ferry (Holdings) Company Limited
20 September 2011	Participants of the Training Course for officials from the Department of Supervision, Dalian Municipal Disciplinary Committee
22 September 2011	Participants of the Training Course for cadres of supervision from Qingdao Municipality, organised by the Hong Kong Financial Services Institute
26 September 2011	Participants of the Training Course on Anti-corruption for officials from Neimenggu Autonomous Region, organised by the Hong Kong Financial Services Institute
28 September 2011	Mr Wang Shiqi, Deputy Secretary, State Bureau for Letters and Calls
3 October 2011	Law students from Beijing University and Wuhan University and NGO personnel from China, organised by the Asian Legal Resource Centre

Date	Visitors
1 November 2011	Delegates from the Commission for Discipline Inspection of Changzhou Municipality, Jiangsu Province, organised by the China Business Centre, Hong Kong Polytechnic University
9 November 2011	Participants of the 2011 Exchange Programme for Mainland Civil Servants, organised by the Hong Kong Institute for Public Administration
15 November 2011	Participants of the Training Course on Effectiveness Assessment for officials from Binhai New Area, Tianjin Municipality, organised by the Hong Kong Financial Services
21 November 2011	Participants of the 9th Postgraduate Certificate Course in Corruption Studies, organised by the School of Professional and Continuing Education, the University of Hong Kong
28 November 2011	Participants of the Training Course on Anti-corruption and Construction for officials from Ningbo Municipal Disciplinary Committee, organised by the Hong Kong Financial Services Institute
29 November 2011	Delegates from the Office of Letters and Calls, Shenzhen Municipal Human Resources and Social Security Bureau, organised by the Vocational Training Council
1 March 2012	Law students from Soka University, Japan, organised by the University of Hong Kong
14 March 2012	Delegates from the Anti-Corruption Commission, Democratic Republic of Timor-Leste
29 March 2012	Participants of the 68th Hong Kong Pei Hua Education Foundation Study Programme on Economic Management for Senior Chinese Officials, organised by the China Business Centre, Hong Kong Polytechnic University





Tables

Table 1

Caseload

	Reporting year[1]				
	07/08	08/09	09/10	10/11	11/12
Enquiries	**12,169**	**14,005**	**13,789**	**12,227**	**12,545**
Complaints					
(a) For processing	**5,929**	**6,671**	**5,869**	**6,467**	**6,085**
- Received	4,987	5,386 [853]	4,803 [393]	5,339 [627]	5,029 [180]
- Brought forward[2]	942	1,285	1,066	1,128	1,056
(b) Processed	**4,644**	**5,701 [1,225]**	**4,775 [402]**	**5,437 [611]**	**5,237 [210]**
Non-pursuable[3]	**2,667**	**3,017 [814]**	**2,560 [100]**	**2,381 [11]**	**2,560 [127]**
Pursued and concluded	**1,977**	**2,684 [411]**	**2,215 [302]**	**3,056 [600]**	**2,677 [83]**
- By inquiry[4]	1,938	2,437 [224]	2,086 [302]	2,894 [524]	2,492 [6]
- By full investigation[5]	38	247 [187]	126	155 [76]	163 [61]
- By mediation[6]	1	0	3	7	22 [16]
(c) Percentage processed = (b) / (a)	**78.3%**	**85.5%**	**81.4%**	**84.1%**	**86.1%**
(d) Carried forward = (a) – (b)	**1,285**	**970**	**1,094**	**1,030**	**848**
Direct investigations completed	**4**	**6**	**7**	**6**	**5**

Note 1. From 1 April to 31 March of the next year.
Note 2. Including 96, 34 and 26 re-opened cases in 2009/10, 2010/11 and 2011/12 respectively.
Note 3. Outside our jurisdiction or restricted by The Ombudsman Ordinance; withdrawn by complainant, discontinued or not undertaken by the Office, e.g. *subjudice* or lack of *prima facie* evidence
Note 4. Pursued under section 11A of the Ordinance, for general cases.
Note 5. Pursued under section 12 of the Ordinance, for complex cases possibly involving serious maladministration, systemic flaws, etc.
Note 6. Pursued under section 11B of the Ordinance, for cases involving no, or only minor, maladministration.
[ ] Number of topical cases (not available before 2008/09).

– See "Glossary of Terms" at Annex 1 for detailed definitions of the above terms.

Table 2

Enquiries/Complaints Received

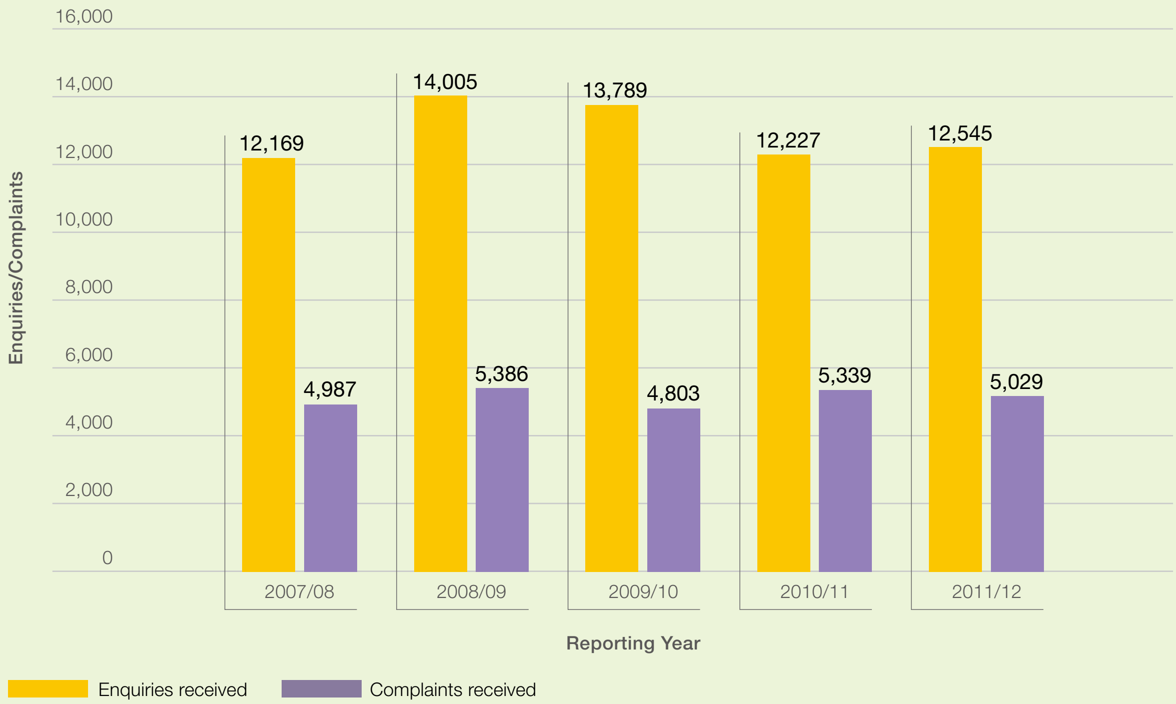


Table 3

Nature of Complaints Processed

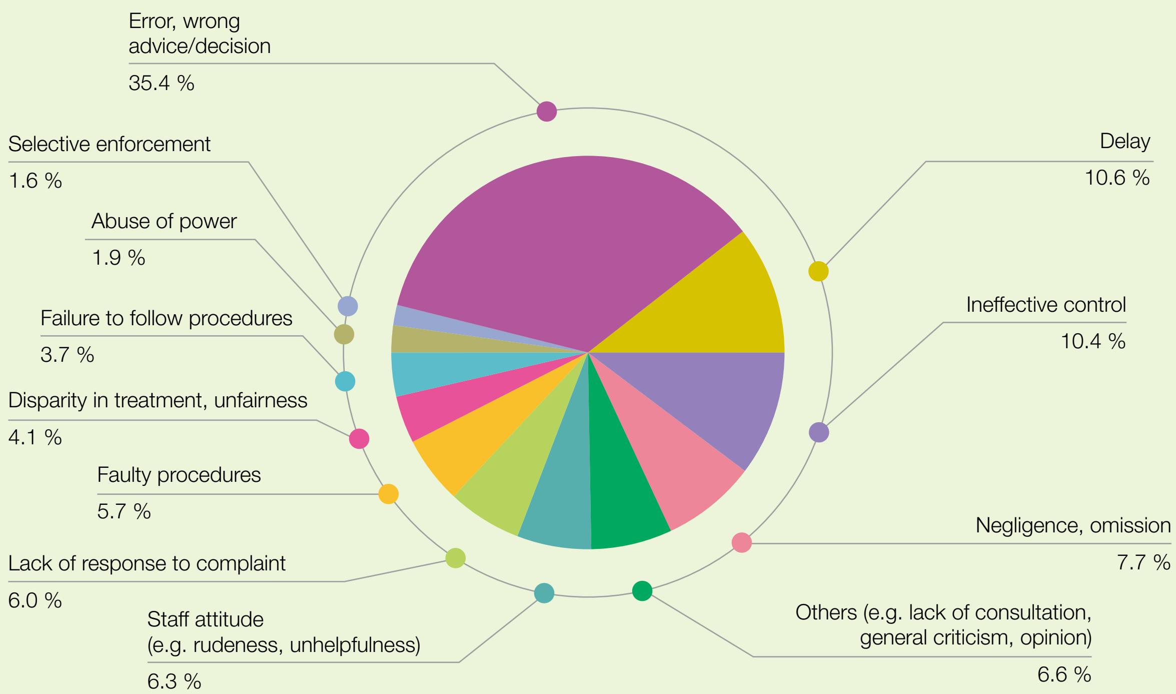


Table 4

Distribution of Enquiries/Complaints Received

Organisation		Enquiries	Complaints
Agriculture, Fisheries and Conservation Department	(AFCD)	34	17
Airport Authority	(AA)	6	5
Architectural Services Department	(Arch SD)	18	13
Audit Commission	(Aud)	1	1
Auxiliary Medical Service	(AMS)	3	0
Buildings Department	(BD)	386	290
Census and Statistics Department	(C & SD)	14	10
Civil Aid Service	(CAS)	1	2
Civil Aviation Department	(CAD)	2	6
Civil Engineering and Development Department	(CEDD)	6	8
Companies Registry	(CR)	26	14
Consumer Council	(CC)	59	32
Correctional Services Department	(CSD)	34	90
Customs and Excise Department	(C&ED)	45	23
Department of Health	(DH)	76	52
Department of Justice	(D of J)	19	23
Drainage Services Department	(DSD)	16	16
Education Department	(ED)	1	0
Electrical and Mechanical Services Department	(E & MSD)	32	22
Employees Retraining Board	(ERB)	35	13
Environmental Protection Department	(EPD)	79	60
Equal Opportunities Commission	(EOC)	35	32
Estate Agents Authority	(EAA)	26	10
Fire Services Department	(FSD)	57	41
Food and Environmental Hygiene Department	(FEHD)	699	559
General Office of the Chief Executive's Office	(GOCEO)	2	7
Government Laboratory	(Govt Lab)	0	1
Government Logistics Department	(GLD)	4	4
Government Property Agency	(GPA)	8	5

Organisation		Enquiries	Complaints
Government Secretariat			
- Chief Secretary for Administration's Office	(GS-CS)	114	53
- Civil Service Bureau	(GS-CSB)	15	6
- Commerce and Economic Development Bureau	(GS-CEDB)	12	11
- Constitutional and Mainland Affairs Bureau	(GS-CMAB)	3	2
- Development Bureau	(GS-DEVB)	9	19
- Education and Manpower Bureau	(GS-EMB)	1	0
- Education Bureau	(GS-EDB)	99	79
- Environment Bureau	(GS-ENB)	5	3
- Financial Secretary's Office	(GS-FS OFF)	17	5
- Financial Secretary's Private Office	(GS-FSPO)	1	2
- Financial Services and the Treasury Bureau	(GS-FSTB)	39	21
- Food and Health Bureau	(GS-FHB)	6	10
- Home Affairs Bureau	(GS-HAB)	6	17
- Labour and Welfare Bureau	(GS-LWB)	8	4
- Security Bureau	(GS-SB)	2	2
- Transport and Housing Bureau	(GS-THB)	4	8
Highways Department	(Hy D)	47	49
Home Affairs Department	(HAD)	152	142
Hong Kong Arts Development Council	(HKADC)	1	1
Hong Kong Examinations and Assessment Authority	(HKEAA)	34	23
Hong Kong Housing Authority	(HKHA)	38	6
Hong Kong Housing Society	(HKHS)	45	34
Hong Kong Monetary Authority	(HKMA)	56	54
Hong Kong Observatory	(HKO)	9	3
Hong Kong Police Force	(HKPF)	376	4
Hospital Authority	(HA)	396	216
Housing Department	(HD)	824	494
Immigration Department	(Imm D)	221	117
Independent Commission Against Corruption	(ICAC)	24	0
Inland Revenue Department	(IRD)	93	56

Organisation		Enquiries	Complaints
Intellectual Property Department	(IPD)	4	3
Judiciary Administrator	(JA)	111	50
Kowloon-Canton Railway Corporation	(KCRC)	3	0
Labour Department	(LD)	148	98
Land Registry	(LR)	7	12
Lands Department	(Lands D)	288	387
Legal Aid Department	(LAD)	143	69
Legislative Council Secretariat	(LCS)	0	2
Leisure and Cultural Services Department	(LCSD)	221	225
Mandatory Provident Fund Schemes Authority	(MPFA)	30	16
Marine Department	(MD)	11	12
Office of the Telecommunications Authority	(OFTA)	46	34
Official Receiver's Office	(ORO)	46	36
Planning Department	(Plan D)	31	29
Post Office	(PO)	107	86
Privacy Commissioner for Personal Data	(PCPD)	26	24
Radio Television Hong Kong	(RTHK)	4	8
Rating and Valuation Department	(RVD)	19	11
Registration and Electoral Office	(REO)	26	21
Securities and Futures Commission	(SFC)	30	32
Social Welfare Department	(SWD)	398	225
Student Financial Assistance Agency	(SFAA)	90	40
Television and Entertainment Licensing Authority	(TELA)	4	9
Trade and Industry Department	(TID)	7	2
Transport Department	(TD)	200	173
Treasury	(Try)	13	5
Urban Renewal Authority	(URA)	18	13
Vocational Training Council	(VTC)	17	19
Water Supplies Department	(WSD)	193	106
West Kowloon Cultural District Authority	(WKCDA)	0	1
Total		**6,622**	**4,545**

Note 1. The total number of enquiries and complaints received in Table 1 are 12,545 and 5,029 respectively. They are different from the figures shown in Table 4 because -
(i) enquiries/complaints involving bodies outside The Ombudsman's jurisdiction; and
(ii) complaints involving organisations under Part II of Schedule 1 to The Ombudsman Ordinance but unrelated to The Code on Access to Information are not shown in Table 4.

Note 2. Organisations under Schedule 1 to The Ombudsman Ordinance with no enquiries/complaints received in the reporting year are not shown.

Table 5

Distribution of Complaints Processed: 5,237 Cases

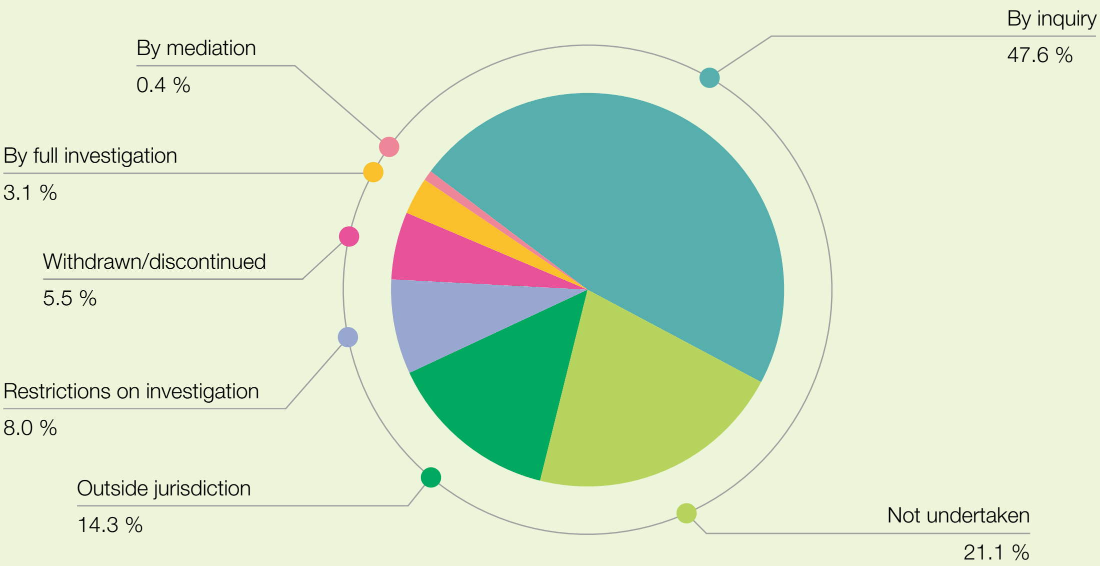
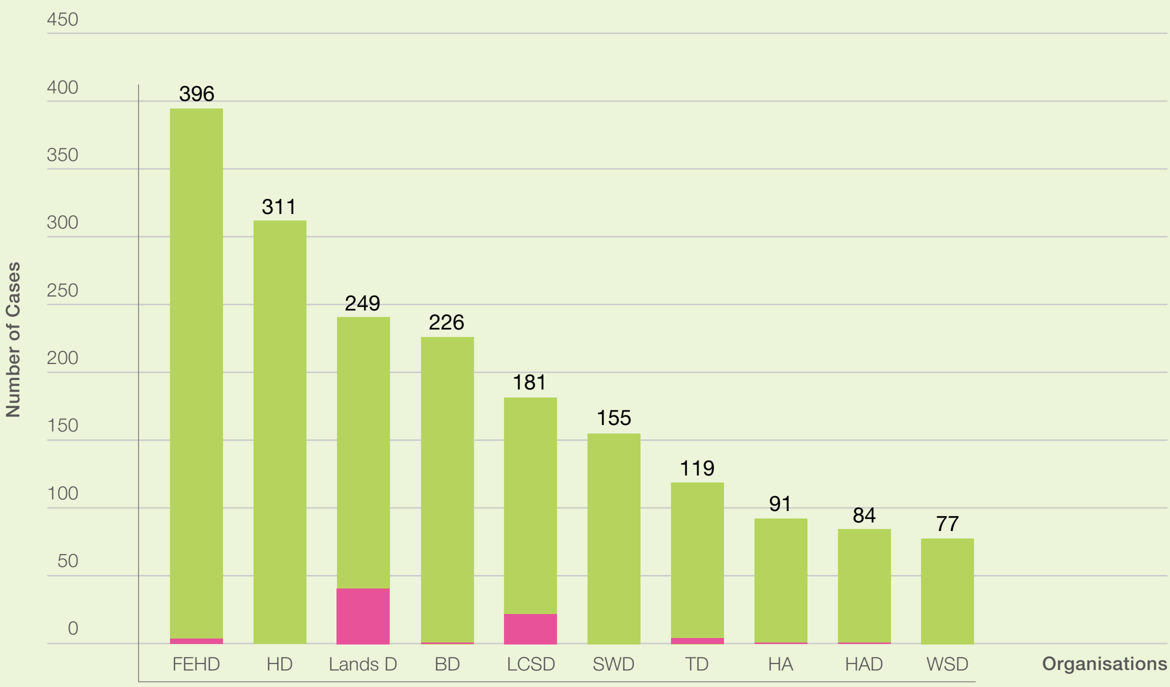


Table 6

Complaints Pursued and Concluded: Top Ten Organisations



Note 1. "Complaints Pursued and Concluded" are cases handled by way of inquiry, full investigation or mediation.

Note 2. These top ten organisations accounted for 70.6% of the 2,677 complaints pursued and concluded.

Note 3. [pink bar] signifies topical complaints (arising from the same social topics).

Table 7

Results of Complaints Concluded by Full Investigation: 163 Cases

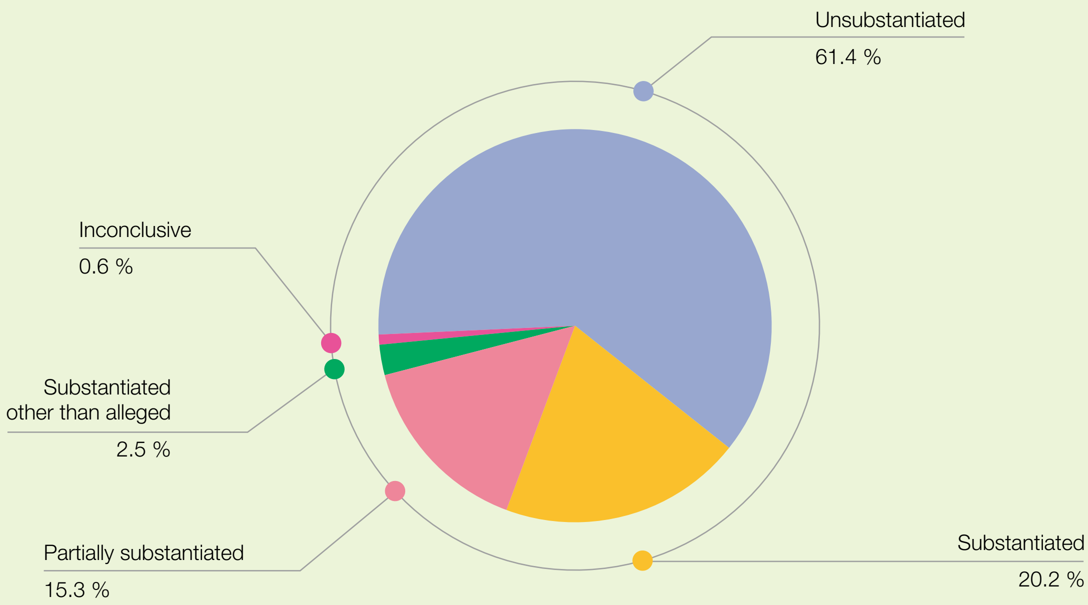


Table 8

Forms of Maladministration Substantiated by Full Investigation

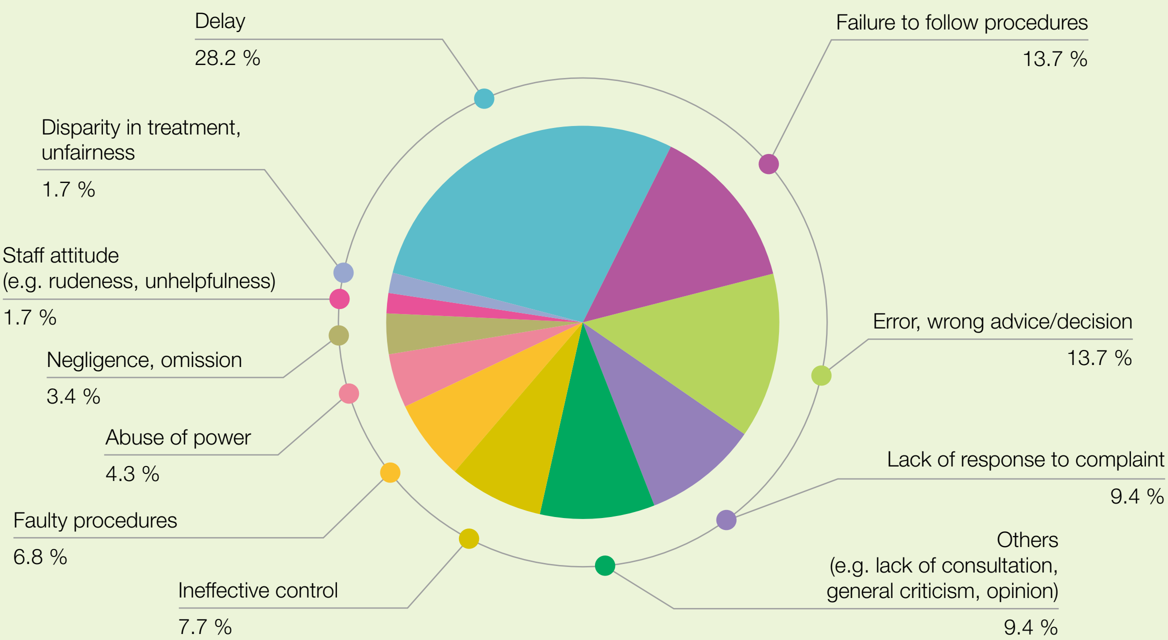


Table 9

Results of Complaints Concluded by Inquiry

Organisation	No. of complaints	Cases with inadequacies/ deficiencies found	No. of Ombudsman's suggestions for improvement
Agriculture, Fisheries and Conservation Department	18	3	1
Airport Authority	3	1	0
Architectural Services Department	2	1	0
Buildings Department	212	90	4
Census and Statistics Department	1	1	0
Civil Aviation Department	3	0	0
Civil Engineering and Development Department	5	1	0
Companies Registry	5	1	0
Consumer Council	14	3	0
Correctional Services Department	53	1	0
Customs and Excise Department	3	0	0
Department of Health	30	8	5
Department of Justice	7	2	0
Drainage Services Department	10	1	0
Electrical and Mechanical Services Department	8	2	3
Employees Retraining Board	4	2	0
Environmental Protection Department	42	2	2
Equal Opportunities Commission	18	0	0
Estate Agents Authority	4	0	1
Fire Services Department	18	3	2
Food and Environmental Hygiene Department	379	182	31
General Office of the Chief Executive's Office	2	0	0
Government Flying Service	1	0	1
Government Laboratory	1	0	0
Government Logistics Department	1	0	0
Government Property Agency	2	1	2

Organisation	No. of complaints	Cases with inadequacies/ deficiencies found	No. of Ombudsman's suggestions for improvement
Government Secretariat			
- Chief Secretary for Administration's Office	25	11	0
- Chief Secretary for Administration's Private Office	1	1	0
- Commerce and Economic Development Bureau	5	0	0
- Constitutional and Mainland Affairs Bureau	3	3	0
- Development Bureau	4	0	0
- Education Bureau	33	7	1
- Environment Bureau	2	0	0
- Financial Secretary's Office	2	0	0
- Financial Secretary's Private Office	1	0	0
- Financial Services and the Treasury Bureau	7	2	0
- Food and Health Bureau	2	1	0
- Home Affairs Bureau	7	1	0
- Labour and Welfare Bureau	3	1	0
- Security Bureau	1	0	0
- Transport and Housing Bureau	3	1	0
Highways Department	24	3	0
Home Affairs Department	79	17	1
Hong Kong Arts Development Council	2	0	0
Hong Kong Examinations and Assessment Authority	14	3	0
Hong Kong Housing Authority	3	0	0
Hong Kong Housing Society	14	3	0
Hong Kong Monetary Authority	26	6	0
Hong Kong Police Force	1	1	0
Hospital Authority	88	21	1
Housing Department	306	58	5
Immigration Department	43	10	1
Information Services Department	1	0	0
Inland Revenue Department	16	4	0
Intellectual Property Department	3	0	0

Organisation	No. of complaints	Cases with inadequacies/ deficiencies found	No. of Ombudsman's suggestions for improvement
Judiciary Administrator	11	1	0
Labour Department	34	8	0
Land Registry	2	0	0
Lands Department	185	45	20
Legal Aid Department	19	2	0
Leisure and Cultural Services Department	160	54	7
Mandatory Provident Fund Schemes Authority	5	1	0
Marine Department	7	1	0
Office of the Telecommunications Authority	9	1	0
Official Receiver's Office	9	2	0
Planning Department	11	0	0
Post Office	46	21	0
Privacy Commissioner for Personal Data	11	2	1
Rating and Valuation Department	4	1	0
Registration and Electoral Office	9	2	1
Securities and Futures Commission	13	3	0
Social Welfare Department	151	33	3
Student Financial Assistance Agency	32	6	0
Television and Entertainment Licensing Authority	4	2	0
Trade and Industry Department	1	1	0
Transport Department	115	17	1
Urban Renewal Authority	8	0	0
Vocational Training Council	7	3	0
Water Supplies Department	74	20	5
Total	**2,492**	**685**	**99**

Note 1. Organisations under Schedule 1 to The Ombudsman Ordinance with no complaints concluded by inquiry are not shown.

Note 2. The Ombudsman may suggest any number of improvement measures in a case, irrespective of whether inadequacies or deficiencies are found after inquiry.

Table 10

Complaint Processing Time

Overall

TIME \ YEAR	07/08	08/09	09/10	10/11	11/12
Less than 3 months	68.1%	72.5%	65.3%	80.1%	83.9%
3 – 6 months	30.4%	26.0%	33.1%	19.3%	15.4%
More than 6 months	1.5%	1.5%	1.6%	0.6%	0.7%
Total	**4,644**	**5,701**	**4,775**	**5,437**	**5,237**

By Full Investigation and Other Modes

TIME \ YEAR	07/08	08/09	09/10	10/11	11/12
Full investigation					
Less than 3 months	0.0%	10.9%	0.8%	50.3%	4.9%
3 – 6 months	23.7%	73.7%	54.0%	29.0%	77.9%
More than 6 months	76.3%	15.4%	45.2%	20.7%	17.2%
Number of complaints	**38**	**247**	**126**	**155**	**163**
Other modes					
Less than 3 months	68.7%	75.3%	67.0%	80.9%	86.4%
3 – 6 months	30.4%	23.9%	32.6%	19.0%	13.4%
More than 6 months	0.9%	0.8%	0.4%	0.1%	0.2%
Number of complaints	**4,606**	**5,454**	**4,649**	**5,282**	**5,074**



Financial Statments

For The Year Ended
31 March 2012

Independent auditor's report to The Ombudsman

(Established in Hong Kong pursuant to the Ombudsman Ordinance)

We have audited the financial statements of The Ombudsman set out on pages 3 to 22, which comprise the balance sheet as at 31 March 2012, the statement of income and expenditure, statement of comprehensive income, statement of changes in funds and cash flow statement for the year then ended and a summary of significant accounting policies and other explanatory information.

The Ombudsman's responsibility for the financial statements

The Ombudsman is responsible for the preparation of financial statements that give a true and fair view in accordance with Hong Kong Financial Reporting Standards issued by the Hong Kong Institute of Certified Public Accountants and for such internal control as The Ombudsman determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. This report is made solely to you, in accordance with our agreed terms of engagement, and for no other purpose. We do not assume responsibility towards or accept liability to any other person for the contents of this report.

We conducted our audit in accordance with Hong Kong Standards on Auditing issued by the Hong Kong Institute of Certified Public Accountants. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation of the financial statements that give a true and fair view in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by The Ombudsman, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Independent auditor's report to The Ombudsman (continued)

(Established in Hong Kong pursuant to the Ombudsman Ordinance)

Opinion

In our opinion, the financial statements give a true and fair view of the state of affairs of The Ombudsman as at 31 March 2012 and of its surplus and cash flows for the year then ended in accordance with Hong Kong Financial Reporting Standards.

Certified Public Accountants

8th Floor, Prince's Building
10 Chater Road
Central, Hong Kong
16 May 2012

Statement of income and expenditure for the year ended 31 March 2012

(Expressed in Hong Kong dollars)

	Note	2012	2011
Income			
Government subventions	3	$ 94,157,111	$ 89,137,680
Amortisation of Government subventions	3	2,965,041	2,965,040
Interest income on bank deposits		5,615,522	3,207,968
Other income		294,246	4,596
		$ 103,031,920	$ 95,315,284
Expenditure			
Operating expenses	4	(84,439,725)	(78,881,194)
Surplus for the year		$ 18,592,195	$ 16,434,090

Statement of comprehensive income for the year ended 31 March 2012

The Ombudsman had no components of comprehensive income other than "surplus for the year" in either of the periods presented. Accordingly, no separate statement of comprehensive income is presented as the Ombudsman's "total comprehensive income" was the same as the "surplus for the year" in both periods.

The notes on pages 9 to 22 form part of these financial statements.

Balance sheet at 31 March 2012

(Expressed in Hong Kong dollars)

	Note	2012	2011
ASSETS			
Non-current assets			
Property, plant and equipment	7	$ 77,050,384	$ 79,509,974
Current assets			
Deposits and prepayments		$ 667,929	$ 609,414
Interest receivable		2,899,494	1,443,348
Time deposits with original maturity over three months		305,327,000	289,367,000
Cash and cash equivalents	8	9,532,837	7,683,120
		$ 318,427,260	$ 299,102,882
Total assets		$ 395,477,644	$ 378,612,856
LIABILITIES			
Non-current liabilities			
Contract gratuity payable - non-current	9	$ 3,677,790	$ 4,785,535
Government subventions - non-current	3	71,599,978	73,912,360
		$ 75,277,768	$ 78,697,895
Current liabilities			
Other payables and accruals		$ 2,084,017	$ 1,783,977
Contract gratuity payable - current	9	4,581,442	2,536,103
Government subventions - current	3	2,312,382	2,965,041
		$ 8,977,841	$ 7,285,121
Total liabilities		$ 84,255,609	$ 85,983,016

Balance sheet at 31 March 2012 (continued)

(Expressed in Hong Kong dollars)

	Note	2012	2011
FUNDS			
Accumulated funds		$ 311,222,035	$ 292,629,840
Total funds and liabilities		$ 395,477,644	$ 378,612,856

Approved and authorised for issue by The Ombudsman on 16 May 2012



) The Ombudsman

The notes on pages 9 to 22 form part of these financial statements.

Statement of changes in funds for the year ended 31 March 2012

(Expressed in Hong Kong dollars)

		Accumulated funds
At 1 April 2010	$	276,195,750
Changes in funds for 2010/2011:		
Surplus and total comprehensive income for the year		16,434,090
At 31 March 2011	$	292,629,840
At 1 April 2011	$	292,629,840
Changes in funds for 2011/2012:		
Surplus and total comprehensive income for the year		18,592,195
At 31 March 2012	$	311,222,035

The notes on pages 9 to 22 form part of these financial statements.

Cash flow statement for the year ended 31 March 2012

(Expressed in Hong Kong dollars)

	Note	2012	2011
Operating activities			
Surplus for the year		$ 18,592,195	$ 16,434,090
Adjustments for:			
Interest income		(5,615,522)	(3,207,968)
Depreciation		3,880,453	3,905,560
Amortisation of Government subventions		(2,965,041)	(2,965,040)
Loss on disposal of property, plant and equipment		2,179	2,044
Operating surplus before changes in working capital		$ 13,894,264	$ 14,168,686
(Increase)/decrease in deposits and prepayments		(58,515)	91,323
Increase/(decrease) in other payables and accruals		300,040	(73,497)
Increase/(decrease) in contract gratuity payable		937,594	(10,576)
Net cash generated from operating activities		$ 15,073,383	$ 14,175,936
Investing activities			
Interest received		$ 4,159,376	$ 3,370,773
Payments for purchase of property, plant and equipment		(1,423,042)	(1,184,762)
Increase of bank deposits with original maturity over three months		(305,327,000)	(289,367,000)
Bank deposits with original maturity over three months matured		289,367,000	275,609,000
Proceeds from disposal of property, plant and equipment		-	1,400
Net cash used in investing activities		$ (13,223,666)	$ (11,570,589)

Cash flow statement
for the year ended 31 March 2012 (continued)

(Expressed in Hong Kong dollars)

	Note		*2012*		*2011*
Net increase in cash and cash equivalents		$	1,849,717	$	2,605,347
Cash and cash equivalents at beginning of the year	8		7,683,120		5,077,773
Cash and cash equivalents at end of the year	8	$	9,532,837	$	7,683,120

The notes on pages 9 to 22 form part of these financial statements.

Notes to the financial statements

(Expressed in Hong Kong dollars unless otherwise indicated)

1 Status of The Ombudsman

The Ombudsman was established as a corporation by statute on 19 December 2001. The functions of The Ombudsman are prescribed by the Ombudsman Ordinance.

The address of its registered office is 30/F, China Merchants Tower, Shun Tak Centre, 168-200 Connaught Road Central, Hong Kong.

2 Significant accounting policies

(a) Statement of compliance

These financial statements have been prepared in accordance with all applicable Hong Kong Financial Reporting Standards ("HKFRSs"), which collective term includes all applicable individual Hong Kong Financial Reporting Standards, Hong Kong Accounting Standards ("HKASs") and Interpretations issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA") and accounting principles generally accepted in Hong Kong. A summary of the significant accounting policies adopted by The Ombudsman is set out below.

The HKICPA has issued certain new and revised HKFRSs that are first effective or available for early adoption for the current accounting period of The Ombudsman. Note 2(c) provides information on any change in accounting policies resulting from initial application of these developments to the extent that they are relevant to The Ombudsman for the current and prior accounting periods reflected in these financial statements.

(b) Basis of preparation of the financial statements

The measurement basis used in the preparation of the financial statements is the historical cost basis.

The preparation of financial statements in conformity with HKFRSs requires management to make judgements, estimates and assumptions that affect the application of policies and reported amounts of assets, liabilities, income and expenditure. The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis of making the judgements about carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates.

2 Significant accounting policies (continued)

(b) Basis of preparation of the financial statements (continued)

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised if the revision affects only that period, or in the period of the revision and future periods if the revision affects both current and future periods.

(c) Changes in accounting policies

The HKICPA has issued a number of amendments to HKFRSs and one new Interpretation that are first effective for the current accounting period of the company. Of these, the following developments are relevant to The Ombudsman's financial statements:

- HKAS 24 (revised 2009), *Related party disclosures*
- Improvements to HKFRSs (2010)

The impacts of these developments are discussed below:

- HKAS 24 (revised 2009) revises the definition of a related party. As a result, The Ombudsman has re-assessed the identification of related parties and concluded that the revised definition does not have any material impact on The Ombudsman's related party disclosures in the current and previous periods.
- Improvements to HKFRSs (2010) omnibus standard introduces a number of amendments to the disclosure requirements in HKFRS 7, *Financial instruments: Disclosures*. These amendments do not have any material impact on the classification, recognition and measurements of the amounts recognised in the financial statements in the current and previous periods.

The Ombudsman has not applied any new standard or interpretation that is not yet effective for the current accounting period (see note 14).

2 Significant accounting policies (continued)

(d) Property, plant and equipment and depreciation

Property, plant and equipment are stated at cost less accumulated depreciation and impairment losses (see note 2(f)).

Depreciation is calculated to write off the cost of items of property, plant and equipment less their estimated residual value, if any, using the straight-line method over their estimated useful lives as follows:

– Leasehold land classified as held under finance leases	Over unexpired term of lease
– Leasehold improvements	10 years
– Building	40 years
– Office equipment	5 years
– Office furniture	5 years
– Computer equipment	4 years
– Motor vehicles	5 years

Both the useful life of an asset and its residual value, if any, are reviewed annually.

Gains or losses arising from the retirement or disposal of an item of property, plant and equipment are determined as the difference between the net disposal proceeds and the carrying amount of the item and are recognised in the statement of income and expenditure on the date of retirement of disposal.

(e) Leased assets

(i) Classification of assets leased to The Ombudsman

Assets that are held by The Ombudsman under leases which transfer to The Ombudsman substantially all the risks and rewards of ownership are classified as being held under finance leases. Leases which do not transfer substantially all the risks and rewards of ownership to The Ombudsman are classified as operating leases.

2 Significant accounting policies (continued)

(e) Leased assets (continued)

(ii) Assets acquired under finance leases

Where The Ombudsman acquires the use of assets under finance leases, the amounts representing the fair value of the leased asset, or, if lower, the present value of the minimum lease payments, of such assets are included in property, plant and equipment and the corresponding liabilities, net of finance charges, are recorded as obligations under finance leases. Depreciation is provided at rates which write off the cost of the assets over the term of the relevant lease or, where it is likely The Ombudsman will obtain ownership of the asset, the life of the asset, as set out in note 2(d). Impairment losses are accounted for in accordance with the accounting policy as set out in note 2(f).

(iii) Operating lease charges

Where The Ombudsman has the use of other assets under operating leases, payments made under the leases are charged to the statement of income and expenditure in equal instalments over the accounting years covered by the lease term, except where an alternative basis is more representative of the pattern of benefits to be derived from the leased asset. Lease incentives received are recognised in statement of income and expenditure as an integral part of the aggregate net lease payments made. Contingent rentals are charged to statement of income and expenditure in the accounting period in which they are incurred.

(f) Impairment of assets

Internal and external sources of information are reviewed at each balance sheet date to identify indications that the property, plant and equipment may be impaired or an impairment loss previously recognised no longer exists or may have decreased.

If any such indication exists, the asset's recoverable amount is estimated. An impairment loss is recognised whenever the carrying amount of an asset exceeds its recoverable amount.

(i) Calculation of recoverable amount

The recoverable amount of an asset is the greater of its fair value less costs to sell and value in use. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of time value of money and the risks specific to the asset. Where an asset does not generate cash inflows largely independent of those from other assets, the recoverable amount is determined for the smallest group of assets that generates cash inflows independently (i.e. a cash-generating unit).

2 Significant accounting policies (continued)

(f) Impairment of assets (continued)

(ii) Recognition of impairment losses

An impairment loss is recognised in the statement of income and expenditure if the carrying amount of an asset, or the cash-generating unit to which it belongs, exceeds its recoverable amount. Impairment losses recognised in respect of cash-generating units are allocated to reduce the carrying amount of the assets in the unit (or group of units) on a pro rata basis, except that the carrying value of an asset will not be reduced below its individual fair value less costs to sell, or value in use, if determinable.

(iii) Reversals of impairment losses

An impairment loss is reversed if there has been a favourable change in the estimates used to determine the recoverable amount.

A reversal of an impairment loss is limited to the asset's carrying amount that would have been determined had no impairment loss been recognised in prior years. Reversals of impairment losses are credited to the statement of income and expenditure in the year in which the reversals are recognised.

(g) Other payable and accruals

Other payable and accruals are initially recognised at fair value and thereafter stated at amortised cost unless the effect of discounting would be immaterial, in which case they are stated at cost.

(h) Employee benefits

Salaries, gratuities, paid annual leave, leave passage and the cost to The Ombudsman of non-monetary benefits are accrued in the year in which the associated services are rendered by employees of The Ombudsman. Where payment or settlement is deferred and the effect would be material, these amounts are stated at their present values.

Contributions to Mandatory Provident Funds as required under the Hong Kong Mandatory Provident Fund Schemes Ordinance are recognised as an expenditure in the statement of income and expenditure as incurred.

2 Significant accounting policies (continued)

(i) Provisions and contingent liabilities

Provisions are recognised for liabilities of uncertain timing or amount when The Ombudsman has a legal or constructive obligation arising as a result of a past event, it is probable that an outflow of economic benefits will be required to settle the obligation and a reliable estimate can be made. Where the time value of money is material, provisions are stated at the present value of the expenditure expected to settle the obligation.

Where it is not probable that an outflow of economic benefits will be required, or the amount cannot be estimated reliably, the obligation is disclosed as a contingent liability, unless the probability of outflow of economic benefits is remote. Possible obligations, whose existence will only be confirmed by the occurrence or non-occurrence of one or more future events are also disclosed as contingent liabilities unless the probability of outflow of economic benefits is remote.

(j) Government grants

Government grants are recognised in the balance sheet initially when there is reasonable assurance that they will be received and that The Ombudsman will comply with the conditions attaching to them. Grants that compensate The Ombudsman for expenses incurred are recognised as revenue in the statement of income and expenditure on a systematic basis in the same periods in which the expenses are incurred. Grants that compensate The Ombudsman for the cost of an asset are deducted from the carrying amount of the asset and consequently are effectively recognised in the statement of income and expenditure over the useful life of the asset by way of reduced depreciation expense.

(k) Income recognition

Income is measured at the fair value of the consideration received or receivable. Provided it is probable that the economic benefits will flow to The Ombudsman and the income and expenditure, if applicable, can be measured reliably, income is recognised in the statement of income and expenditure as follows:

(i) Government subventions

Government subventions are accounted for on an accrual basis in accordance with note 2(j).

(ii) Interest income

Interest income is recognised as it accrues using the effective interest method.

(iii) Other income

Other income is recognised on an accrual basis.

2 Significant accounting policies (continued)

(l) Related parties

(a) A person, or a close member of that person's family, is related to The Ombudsman if that person:

(i) has control or joint control over The Ombudsman;

(ii) has significant influence over The Ombudsman; or

(iii) is a member of the key management personnel of The Ombudsman.

(b) An entity is related to The Ombudsman if any of the following conditions applies:

(i) The entity and The Ombudsman are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others).

(ii) One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member).

(iii) Both entities are joint ventures of the same third party.

(iv) One entity is a joint venture of a third entity and the other entity is an associate of the third entity.

(v) The entity is a post-employment benefit plan for the benefit of employees of either The Ombudsman or an entity related to The Ombudsman.

(vi) The entity is controlled or jointly controlled by a person identified in (a).

(vii) A person identified in (a)(i) has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity).

Close members of the family of a person are those family members who may be expected to influence, or be influenced by, that person in their dealings with the entity.

3 Government subventions/amortisation of Government subventions

Government subventions represent the funds granted by the Government for daily operations of The Ombudsman. Amortisation of Government subventions represents the funds granted by the Government for prepaid operating lease payments, the purchase of buildings and certain leasehold improvements. Subvention income is recognised on a straight line basis over the period of the lease term or the useful life of the assets, which are estimated to be 54 years, 40 years and 10 years, respectively.

		2012		*2011*
Government subventions	$	73,912,360	$	76,877,401
Current portion of government subventions		(2,312,382)		(2,965,041)
	$	71,599,978	$	73,912,360

4 Operating expenses

		2012		*2011*
Employee benefit expense (note 5)	$	71,020,138	$	66,649,755
Depreciation of property, plant and equipment		3,880,453		3,905,560
Rates and management fee		2,289,512		2,118,415
Operating lease rentals in respect of parking spaces		91,200		91,200
Auditor's remuneration		60,000		54,000
Announcement of public interest expense		3,138,151		2,186,927
Video production expense		550,000		800,125
Other expenses		3,410,271		3,075,212
	$	84,439,725	$	78,881,194

5 Employee benefit expense

	2012	2011
Salary and allowances	$ 62,456,923	$ 58,892,000
Contract gratuity	6,055,812	5,481,298
Pension costs - MPF scheme	1,244,382	1,156,469
Unutilised annual leave	144,233	(33,649)
Other employee benefit expenses	1,118,788	1,153,637
	$ 71,020,138	$ 66,649,755

6 Key management compensation

	2012	2011
Short-term employee benefits	$ 12,132,192	$ 11,612,905
Post-employment benefits	1,780,238	1,693,419
	$ 13,912,430	$ 13,306,324

7 Property, plant and equipment

Cost:	*Interest in leasehold land held for own use under finance lease*	*Building*	*Leasehold improvements*	*Office furniture*	*Office equipment*	*Computer equipment*	*Motor vehicles*	*Total*
At 1 April 2010	$ 74,900,000	$ 16,800,000	$ 11,934,803	$ 466,336	$ 731,405	$ 2,624,292	$ 179,801	$ 107,636,637
Additions	-	-	835,584	57,587	88,530	203,061	-	1,184,762
Disposals	-	-	-	-	(86,596)	(903)	-	(87,499)
At 31 March 2011	$ 74,900,000	$ 16,800,000	$ 12,770,387	$ 523,923	$ 733,339	$ 2,826,450	$ 179,801	$ 108,733,900
Accumulated depreciation:								
At 1 April 2010	$ 11,274,924	$ 3,382,438	$ 8,754,245	$ 142,254	$ 363,686	$ 1,452,362	$ 32,512	$ 25,402,421
Depreciation	1,394,220	420,000	1,220,953	98,168	136,219	600,040	35,960	3,905,560
Written back on disposal	-	-	-	-	(83,203)	(852)	-	(84,055)
At 31 March 2011	$ 12,669,144	$ 3,802,438	$ 9,975,198	$ 240,422	$ 416,702	$ 2,051,550	$ 68,472	$ 29,223,926
Net book value:								
At 31 March 2011	$ 62,230,856	$ 12,997,562	$ 2,795,189	$ 283,501	$ 316,637	$ 774,900	$ 111,329	$ 79,509,974

7 Property, plant and equipment (continued)

Cost:	*Interest in leasehold land held for own use under finance lease*	*Building*	*Leasehold improvements*	*Office furniture*	*Office equipment*	*Computer equipment*	*Motor vehicles*	*Total*
At 1 April 2011	$ 74,900,000	$ 16,800,000	$ 12,770,387	$ 523,923	$ 733,339	$ 2,826,450	$ 179,801	$ 108,733,900
Additions	-	-	1,143,058	45,784	98,866	135,334	-	1,423,042
Disposals	-	-	-	(1,773)	(2,920)	(16,272)	-	(20,965)
At 31 March 2012	$ 74,900,000	$ 16,800,000	$ 13,913,445	$ 567,934	$ 829,285	$ 2,945,512	$ 179,801	$ 110,135,977
Accumulated depreciation:								
At 1 April 2011	$ 12,669,144	$ 3,802,438	$ 9,975,198	$ 240,422	$ 416,702	$ 2,051,550	$ 68,472	$ 29,223,926
Depreciation	1,394,220	420,000	1,355,050	107,851	139,193	428,179	35,960	3,880,453
Written back on disposal	-	-	-	(1,028)	(1,985)	(15,773)	-	(18,786)
At 31 March 2012	$ 14,063,364	$ 4,222,438	$ 11,330,248	$ 347,245	$ 553,910	$ 2,463,956	$ 104,432	$ 33,085,593
Net book value:								
At 31 March 2012	$ 60,836,636	$ 12,577,562	$ 2,583,197	$ 220,689	$ 275,375	$ 481,556	$ 75,369	$ 77,050,384

The Ombudsman's interest in leasehold land is held under long lease.

8 Cash and cash equivalents

	2012	2011
Cash at bank	$ 9,527,837	$ 7,678,120
Cash in hand	5,000	5,000
	$ 9,532,837	$ 7,683,120

9 Contract gratuity payable

The amount represents the gratuity payable to staff on expiry of their employment contract. The amount of gratuity ranges from 10% to 25% of the basic salary less employer's contributions to Mandatory Provident Fund.

10 Taxation

The Ombudsman is exempted from taxation in respect of the Inland Revenue Ordinance in accordance with the Schedule 1A Section 5(1) of the Ombudsman Ordinance.

11 Commitments

At 31 March 2012, the total future aggregate minimum lease payments under non-cancellable operating leases in respect of parking spaces are payable as follows:

	2012	2011
Within 1 year	$ 7,600	$ 7,600

12 Management of accumulated funds

The Ombudsman's primary objectives when managing its accumulated funds are to safeguard The Ombudsman's ability to continue as a going concern. The Ombudsman is not subject to externally imposed requirements relating to its accumulated funds.

13 Financial risk management

Risk management is carried out by the accounting department under policies approved by The Ombudsman. The accounting department identifies and evaluates financial risks in close co-operation with the operating units. The Ombudsman provides written principles for overall risk management such as interest-rate risk, use of financial instruments and investing excess liquidity.

Exposure to credit, liquidity and interest rate risks are described below:

(a) Credit risk

The Ombudsman's credit risk is primarily attributable to cash and cash equivalents. Management has a credit policy in place and the exposure to this credit risk is monitored on an ongoing basis.

Cash is deposited with financial institutions with sound credit ratings to minimise credit exposure.

The maximum exposure to credit risk is represented by the carrying amount of each financial asset in the balance sheet. The Ombudsman does not provide any guarantees which would expose The Ombudsman to credit risk.

(b) Liquidity risk

The Ombudsman's policy is to regularly monitor current and expected liquidity requirements and to ensure that it maintains sufficient reserves of cash to meet its liquidity requirements in the short and longer term.

The following table details the remaining contractual maturities at the balance sheet date of The Ombudsman's financial liabilities, which are based on contractual undiscounted cash flows and the earliest date The Ombudsman can be required to pay:

	2012				
	Carrying amount	*Total contractual undiscounted cash flows*	*Within 1 year or on demand*	*More than 1 year but less than 2 years*	*More than 2 years but less than 5 years*
Contract gratuity payable	$ 8,259,232	$ (8,259,232)	$ (4,581,442)	$ (3,228,667)	$ (449,123)
Other payables and accruals	2,084,017	(2,084,017)	(2,084,017)	-	-
	$ 10,343,249	$ (10,343,249)	$ (6,665,459)	$ (3,228,667)	$ (449,123)

13 Financial risk management (continued)

(b) Liquidity risk (continued)

	2011				
	Carrying amount	*Total contractual undiscounted cash flows*	*Within 1 year or on demand*	*More than 1 year but less than 2 years*	*More than 2 years but less than 5 years*
Contract gratuity payable	$ 7,321,638	$ (7,321,638)	$ (2,536,103)	$ (2,661,862)	$ (2,123,673)
Other payables and accruals	1,783,977	(1,783,977)	(1,783,977)	-	-
	$ 9,105,615	$ (9,105,615)	$ (4,320,080)	$ (2,661,862)	$ (2,123,673)

(c) Interest rate risk

Interest rate risk is the risk that the value of a financial instrument will fluctuate due to changes in market interest rates. The Ombudsman's only exposure to interest rate risk is via its bank balances which bear interest at market rates.

Sensitivity analysis

At 31 March 2012, it is estimated that a general increase/decrease of 100 basis points in interest rates, with all other variables held constant, would increase/decrease The Ombudsman's surplus and accumulated funds by approximately $3,149,000 (2011: $2,971,000).

The sensitivity analysis above has been determined assuming that the change in interest rates had occurred at the balance sheet date and had been applied to the exposure to interest rate risk for financial instruments in existence at that date. The 100 basis points increase or decrease represents management's assessment of a reasonably possible change in interest rates over the period until the next annual balance sheet date. The analysis is performed on the same basis for 2011.

(d) All financial instruments are carried at amounts not materially different from their fair values as at 31 March 2012 and 2011.

14 Possible impact of amendments, new standards and interpretations issued but not yet effective for the year ended 31 March 2012

Up to the date of issue of these financial statements, the HKICPA has issued a number of amendments and new standards which are not yet effective for the year ended 31 March 2012 and which have not been adopted in these financial statements.

The Ombudsman is in the process of making an assessment of what the impact of these amendments and new standards is expected to be in the period of initial application. So far it has concluded that the adoption of them is unlikely to have a significant impact on The Ombudsman's results of operations and financial position.

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